No. 15729

United States Court of Appeals

for the Ninth Circuit

PLUMBERS & STEAMFITTERS UNION, LOCAL No. 598,

Appellant,

vs.

W. C. DILLION,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Eastern District of Washington Southern Division.

Phillips & Van Orden Co., 4th & Berry, San Francisco, Calif.—12-6-57

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

VANCE AND PETERSON,
230 Sixth Avenue North,
Seattle 9, Washington,

Attorneys for Plumbers' and Steamfitters' Union, et al., Appellants.

GLADSTONE & DAY,
1329 George Washington Way,
Richland, Washington,

Attorneys for W. C. Dillion, Appellee.

In the District Court of the United States for the Eastern District of Washington, Southern Division

Civil No. 978

W. C. DILLION,

Plaintiff,

vs.

PLUMBERS & STEAMFITTERS UNION, LOCAL #598 OF PASCO, WASHINGTON; W. W. CAPE; RUDELL BEAMES; WILLIAM LAWSON; J. P. HEAD, d/b/a/ J. P. HEAD PLUMBING; J. L. MOKLER and JAMES MOKLER, d/b/a MOKLER PLUMBING & HEATING; R. E. RANDOLPH and E. L. TAYLOR, d/b/a RANDOLPH & TAYLOR PLUMBING & HEATING;

Defendants.

AMENDED COMPLAINT

Comes now the plaintiff and for his First cause of Action in his Amended Complaint alleges as follows:

I.

That defendants, Plumbers & Steamfitters Union, Local #598 of Pasco, Washington, hereinafter sometimes called the "Local Union," holds itself out to the general public as representing employees who are employed generally in the plumbing and steamfitting industry; that defendants, W. W. Cape, Rudell Beames and William Lawson are members of said Local Union, and Rudell Beames is the busi-

ness agent of said Local Union; that W. W. Cape is an assistant business agent of said Local Union and William Lawson is an assistant business agent of said Local Union.

II.

That plaintiff's action arises under the Act of June 23, 1947, C. 120, Title III, Sec, 301, 61 Stat. 156; USC Title 29, Sec. 185.

III.

That defendant Local Union is a labor organization representing [1*] employees in an industry affecting commerce as defined in said Sec. 185, Title 29 USC; that said Local Union maintains its principal office in Pasco, Washington, and its duly authorized officers or agents are engaged in representing or acting for employee members in Pasco, Washington; that the court has jurisdiction of the parties to plaintiff's first cause of action by virtue thereof and as hereinafter appears.

IV.

That during a period commencing June 1, 1954, or thereabouts, and up to and including November 22, 1954, plaintiff discussed with and informed the Executive Board and business representatives of defendant Local Union of his desire to establish a pipe fabricating and installing and pipeline contracting business; that by reason thereof defendant Local Union, Rudell Beames, W. W. Cape and William

*Page numbering appearing at foot of page of original Certified Transcript of Record.

Lawson were apprised of plaintiff's desires, plans and intentions prior to November 22, 1954; that plaintiff, during said period, was advised by representatives of said Local Union that he would have to have a collective bargaining agreement with the Local Union before they would furnish him with men to work in his said proposed business; that said Local Union effectively controlled and still controls the supply of labor available for the type of business in which plaintiff sought to become established, within the area in which plaintiff then proposed to operate; that defendant Local Union through its representatives, informed plaintiff that he must have an existing shop in Pasco, Washington, a contract for work, and a bond to insure payment of labor obtained under the proposed collective bargaining agreement before any collective bargaining agreement would be entered into between said Local Union and Plaintiff. That pursuant to this information, and relying thereon, plaintiff established a shop for fabricating pipe in Pasco, Washington, obtained a contract for work, fabricating and installing pipe, and furnished to said Local Union a bond to insure payment of labor under the proposed collective bargaining agreement.

V.

That plaintiff did thereby establish himself in a pipe fabricating [2] and installing business, seventy-five per cent of which such pipe as would be fabricated and installed by plaintiff in such business he would be required to furnish as contractor on jobs obtained by him, and forty per cent of which such

pipe furnished by him would have to be obtained from without the State of Washington, that is, from Portland, Oregon, and Fontana and Los Angeles, California, and shipped across state lines into the State of Washington, according to plantiff's plans and as was usual in the pipe fabricating and installing and pipeline contracting business in Washington; that in such business plantiff would be fabricating and installing pipe carrying liquids and gases across state lines and national boundaries, according to his plans and as is usual in such business.

VI.

That thereafter and on November 22, 1954, plaintiff and defendant Local Union entered into a collective bargaining agreement, the original of which is on file in this court, is marked Exhibit A, and by this reference is hereby made a part of this amended complaint pursuant to stipulation of the parties; that defendant Local Union did thereupon orally agree with plaintiff to furnish to plaintiff men to work in plaintiff's business, and that said parties incorporated such agreement to furnish men in the terms of their said collective bargaining agreement.

VII.

That if said agreement by defendant Local Union to furnish men to plaintiff is not set forth in said collective bargaining agreement in words or by reasonable inference, then the same has been omitted by mistake, inadvertence and neglect and should be

made a part thereof to properly set forth the full agreement of the parties thereto.

VIII.

That plaintiff has fully performed his part of all contracts and agreements entered into between defendant Local Union and himself. [3]

IX.

That pursuant to said agreement to furnish men, plaintiff made demand upon defendant Local Union for men and said Local Union furnished two men to the plaintiff; that plaintiff thereafter informed defendant Local Union of the need for more men and informed defendant Local Union that if such men were not furnished to plaintiff by Local Union, plaintiff would not be able to complete his said work contract and plaintiff would be compelled to go out of business; that defendant Local Union was further informed that there were unemployed union men who were ready, able and willing to work for the plaintiff, and that said defendant Local Union did arbitrarily refuse to furnish men to plaintiff, full knowing such circumstances and in breach of said agreement to furnish men.

X.

That by virture of the foregoing alleged acts of defendant Local Union, the defendant Local Union is now estopped to deny that it did so agree to furnish men to plaintiff.

XI.

That the two men furnished by said Local Union to plaintiff worked for the plaintiff for a period of a total of 48 hours and plaintiff thereby became and was an employer.

XII.

That the effect of the aforesaid acts of defendant Local Union was to eliminate plaintiff as a purchaser of pipe, as a pipe fabricating and installing contractor from firms in Oregon and California, from which states pipe would be shipped into the State of Washington across state boundaries, thereby suppressing competition in the interstate markets by discriminating between its would-be purchasers.

XIII.

That by reason of the foregoing acts of defendant Local Union, plaintiff lost his contract for his job and was compelled to go out of business, [4] all to his damage in the sum of $50,000.00.

Comes Now the Plaintiff and for a Second Cause of Action, and in the Alternative, Alleges as Follows:

I.

Plaintiff realleges all of paragraphs I, III, IV, V, VI, VIII, IX and XII of his First Cause of Action hereinbefore set forth as fully as though set forth at length herein.

II.

That plaintiff's action arises under Sections 1-7 and 15, Title 15 USC.

III.

That the defendant, J. P. Head, d/b/a J. P. Head Plumbing, at all times hereinbefore mentioned and material hereto was operating as a pipe fabricator and installer in that area in the State of Washington in which plaintiff established and sought to maintain his said pipe fabricating and installing business; that J. L. Mokler and James Mokler, d/b/a Mokler Plumbing & Heating, at all times hereinbefore mentioned and material hereto, were operating as a pipe fabricator and installer in that area in the State of Washington in which plaintiff established and sought to maintain his said pipe fabricating and installing business; that defendants R. E. Randolph and E. L. Taylor, d/b/a Randolph & Taylor Plumbing & Heating, at all times hereinbefore mentioned and material thereto were operating as pipe fabricators and installers in that area in the State of Washington in which plaintiff established and sought to maintain his said pipe fabricating and installing and contracting business.

IV.

That defendant Labor Union, acting through its authorized representatives, did arbitrarily refuse to furnish labor to plaintiff contrary to its said agreement, in pursuance of a conspiracy with

all of the said other defendants named, all such defendants then full knowing plaintiff's need for labor [5] such as was effectively controlled by defendant Local Union in order to perform his said work contract and to maintain himself in business, said conspiracy being one to injure plaintiff, to suppress competition to defendants J. P. Head, d/b/a J. P. Head Plumbing; J. L. Mokler and James Mokler, d/b/a Mokler Plumbing & Heating; and R. E. Randolph and E. L. Taylor, d/b/a Randolph & Taylor Plumbing & Heating, and to unlawfully interfere with employment by plaintiff of labor in an industry affecting interstate commerce.

V.

That the effect of said conspiracy was that plaintiff lost his contract for his job and was compelled to go out of business, that plaintiff was eliminated as a purchaser of pipe, as a pipe fabricating and installing contractor, from firms in Oregon and California, from which states pipe would be shipped into the State of Washington across state boundaries, thereby suppressing competition in the interstate markets by discriminating between its would-be purchasers; that all of said defendants intended that said effect be the consequences of the acts of said Local Union in refusing to furnish men to plaintiff and that same was the purpose of their said conspiracy.

VI.

That by reason of intent, tendency or the inherent nature of the refusal to furnish men to

plaintiff, the said conspiracy was reasonably calculated to prejudice the public interest by unduly restricting interstate commerce.

VII.

That by reason of the foregoing acts of all of the defendants, plaintiff lost his contract for his job and was compelled to go out of business all to his damage in the sum of $50,000.00, which should be trebled under the provisions of said Sec. 15, Title 15 USC.

Wherefore, plaintiff prays for judgment against the defendant Local Union on his First Cause of Action, for breach of said Local Union's agreement to furnish men to plaintiff, determining that defendant Local Union is estopped to deny that it agreed to furnish men to plaintiff, and if the collective [6] bargaining agreement entered into between plaintiff and defendant Local Union by its terms does not extend to include an agreement by defendant to furnish men to plaintiff, that it be reformed to show that it does so extend and include such agreement; that plaintiff recover from said defendant Local Union the sum of $50,000.00 on his First Cause of Action, together with costs, reasonable attorney fees and for such other and further relief as to the Court may seem proper under the circumstances; and in the alternative, plaintiff prays for judgment against the defendants and each of them under his Second Cause of Action in the sum of $50,000.00 and asks that same

be trebled as allowed by law, that plaintiff be allowed reasonable attorney fees and costs and for such other and further relief as to the court may seem proper under the circumstances.

/s/ WAYNE GOLDSTONE,
Attorney for Plaintiff.

[Endorsed]. Filed April 29, 1955. [7]

[Title of District Court and Cause.]

MOTION TO DISMISS AMENDED COMPLAINT UNDER FEDERAL RULE OF CIVIL PROCEDURE 12 (b)

Comes Now the defendants, Plumbers and Steamfitters Union, Local No. 598, of Pasco, Washington, Woodrow W. Cape, RuDell Beames and William Lawson, appearing by their attorney undersigned, and jointly and severally move to dismiss the first cause of action of plaintiff's amended complaint on the following grounds:

1. That the facts stated therein do not constitute any ground for imposition of liability upon or recovery of damages from these defendants, or any of them.

2. That the plaintiff has failed to exhaust his remedies under the collective agreement which he alleges has been breached by the actions of the defendants.

3. That the facts stated therein do not state or set forth any facts showing any causal connection between the acts alleged to have been performed by these defendants, or any of them, and the damages alleged to have been suffered by the plaintiff.

4. That said cause of action does not state sufficient facts to enable these defendants, or any of them, to know or understand the nature of the action against them or to respond to said action.

5. That the Court is without jurisdiction under the Act of June 23, 1947, C. 120, Title III, Sec. 301, 61 Stat. 156; U.S.C. Title 29, Sec. 185 to grant the relief prayed for by plaintiff in paragraph VII of his complaint as [8] amended.

Further, the above-named defendants jointly and severally move to dismiss the second cause of action of plaintiff's amended complaint on the following grounds:

1. That the facts stated therein do not constitute any ground for imposition of liability upon or recovery of damages from these defendants or either of them.

2. That the facts pleaded therein do not allege any restraint upon or monopoly of commerce between the states.

3. That the facts stated therein do not state or set forth a combination, conspiracy or contract in restraint of or to monopolize commerce between the states.

4. That the facts stated therein do not state facts showing any causal connection between the acts alleged to have been performed by these defendants, or any of them, and the damage alleged to have been suffered by the plaintiff.

5. That said cause of action does not state sufficient facts to enable these defendants, or any of them, to know or understand the nature of the action against them or to respond to said action.

6. That the subject matter of the said cause of action is not an article of commerce within the meaning of the statutes referred to in said cause of action.

7. That the subject matter of said cause of action has been pre-empted by the Labor-Management Relations Act and that the statutes referred to in said cause of action are thereby no longer applicable to said subject matter.

Respectfully submitted,

/s/ JAMES J. MOLTHAN,

Attorney for defendants Plumbers and Steamfitters Union, Local 598, W. W. Cape, RuDell Beames and William Lawson.

[Endorsed]: Filed May 11, 1955. [9]

[Title of District Court and Cause.]

ORDER DENYING MOTION TO DISMISS AMENDED COMPLAINT

In the above-entitled action the defendants, Plumbers and Steamfitters Union, Local No. 598, of Pasco, Washington, Woodrow W. Cape, RuDell Beames, and William Lawson, jointly and severally moved to dismiss the first and second causes of action of plaintiff's amended complaint. The motion was heard on stipulation of counsel at Spokane, Washington, and was taken under advisement by the Court. The Court has heard the argument of counsel, has considered the written briefs submitted, and is fully advised in the premises.

It Is Now Therefore Ordered that said defendants' motion to dismiss the first and second causes of action of plaintiff's amended complaint is hereby denied, and said defendants are allowed thirty days from the date of this order to answer the amended complaint.

Dated this 17th day of November, 1955.

/s/ SAM M. DRIVER,
United States District Judge.

[Endorsed]: Filed November 17, 1955. [10]

[Title of District Court and Cause.]

ANSWER OF J. P. HEAD, J. L. MOKLER and JAMES MOKLER, R. E. RANDOLPH and E. L. TAYLOR

Come Now the defendants, J. P. Head, J. L. Mokler and James Mokler, R. E. Randolph and E. L. Taylor and in answer to the Second Cause of Action of the Amended Complaint of plaintiff herein, said defendants allege and deny as follows:

I.

With reference to Paragraph I of the First Cause of Action (realleged by reference in the Second Cause of Action), these defendants admit that Local No. 598 represents employees who are employed generally in the plumbing and steamfitting industry; but these defendants do not have specific knowledge of the capacity of the individuals named in said paragraph and these defendants deny each and every additional allegation in said paragraph.

II.

With reference to Paragraph III of the First Cause of Action (realleged by reference in the Second Cause of Action), these defendants admit that Local No. 598 is a labor organization and [11] admit that said Local Union maintains its principal office in Pasco, Washington, and admit that the duly authorized officers or agents of said Local Union represent its employee members in Pasco, Washington; but these defendants deny each and every additional allegation in said paragraph.

III.

With reference to Paragraph IV of the First Cause of Action (realleged by reference in the Second Cause of Action), these defendants deny each and every allegation contained therein.

IV.

With reference to Paragraph V of the First Cause of Action (realleged by reference in the Second Cause of Action), these defendants deny each and every allegation contained therein.

V.

With reference to Paragraph VI of the First Cause of Action (realleged by reference in the Second Cause of Action), these defendants deny each and every allegation contained therein.

VI.

With reference to Paragraph VIII of the First Cause of Action (realleged by reference in the Second Cause of Action), these defendants deny each and every allegation contained therein.

VII.

With reference to Paragraph IX of the First Cause of Action (realleged by reference in the Second Cause of Action), these defendants deny each and every allegation contained therein.

VIII.

With reference to Paragraph XII of the First Cause of Action (realleged by reference in the

Second Cause of Action), these defendants deny each and every allegation contained therein.

IX.

With reference to Paragraph II of the Second Cause of [12] Action, these defendants deny each allegation contained therein.

X.

With reference to Paragraph III of the Second Cause of Action, these defendants admit that at all times mentioned in the Complaint they were engaged in business in the State of Washington as mechanical contractors, including the business of fabrication and installation of pipe; but these defendants deny each and every additional allegation contained therein.

XI.

With reference to Paragraph IV of the Second Cause of Action, these defendants deny each and every allegation contained therein.

XII.

With reference to Paragraph V of the Second Cause of Action, these defendants deny each and every allegation contained therein.

XIII.

With reference to Paragraph VI of the Second Cause of Action, these defendants deny each and every allegation contained therein.

XIV.

With reference to Paragraph VII of the Second

Cause of Action, these defendants deny each and every allegation contained therein.

Wherefore, defendants pray that the plaintiff take nothing by his Complaint and for their costs and disbursements; and for such other and further relief as may be deemed appropriate.

FERGUSON & BURDELL,

By /s/ CHARLES S. BURDELL,

Attorneys for Defendants J. P. Head, J. L. Mokler, James Mokler, R. E. Randolph and E. L. Taylor.

Receipt of copy acknowledged.

[Endorsed]: Filed December 19, 1955. [13]

[Title of District Court and Cause.]

ANSWER OF PLUMBERS & STEAMFITTERS UNION, LOCAL No. 598

Comes Now the defendant union and Ru Dell Beames, William I. Lawson and W. W. Cape, the named officers and employees of said defendant union, also named defendants herein, and in answer to the First Cause of Action of the Amended Complaint of plaintiff herein, defendants allege and deny as follows:

I.

With reference to Paragraph I of the First Cause of Action, these defendants admit that Local

Union No. 598 represents employees who are employed generally in the plumbing and steamfitting industry, and deny each and every other allegation, matter and thing alleged in said paragraph.

II.

In reference to Paragraph II of the First Cause of Action, these defendants deny that plaintiff's action arises under the Act of June 23, 1947, C. 120, Title III, Sec. 301, 61 Stat. 156; USC Title 29, Sec. 185.

III.

In reference to Paragraph III of the First Cause of Action, these defendants admit each and every allegation in said paragraph except these defendants deny the Court has jurisdiction of the parties to plaintiff's First Cause of Action. [14]

IV.

In reference to Paragraph IV of the First Cause of Action, these defendants deny each and every allegation contained therein.

V.

In reference to Paragraph V of the First Cause of Action, these defendants deny each and every allegation contained therein.

VI.

In reference to Paragraph VI of the First Cause of Action, these defendants deny each and every allegation contained therein.

VII.

In reference to Paragraph VII of the First Cause of Action, these defendants deny each and every allegation contained therein.

VIII.

In reference to Paragraph VIII of the First Cause of Action, these defendants deny each and every allegation contained therein.

IX.

In reference to Paragraph IX of the First Cause of Action, these defendants deny each and every allegation contained therein.

X.

In reference to Paragraph X of the First Cause of Action, these defendants deny each and every allegation contained therein.

XI.

In reference to Paragraph XI of the First Cause of Action, these defendants deny each and every allegation contained therein.

XII.

In reference to Paragraph XII of the First Cause of Action, these defendants deny each and every allegation contained therein.

XIII.

In reference to Paragraph XIII of the First Cause of Action, these defendants deny each and every allegation contained therein.

Come Now Defendants Above Named and in Answer to the Second Cause of Action of the Amended Complaint of Plaintiff Herein, Defendants Allege and Deny as Follows: [15]

I.

In reference to Paragraph I of the Second Cause of Action, defendants reallege all admissions and denials heretofore made to Paragraphs I, III, IV, V, VI, VIII, IX and XII of plaintiff's First Cause of Action, realleged by reference in plaintiff's Second Cause of Action, as fully as though set forth at length herein.

II.

In reference to Paragraph II of the Second Cause of Action, these defendants deny each and every allegation in said paragraph.

III.

In reference to Paragraph III of the Second Cause of Action, these defendants do not have specific knowledge of the capacity and operations of the individuals named in said paragraph and these defendants therefore deny each and every allegation in said paragraph.

IV.

In reference to Paragraph IV of the Second Cause of Action, these defendants deny each and every allegation in said paragraph.

V.

In reference to Paragraph V of the Second Cause of Action, these defendants deny each and every allegation in said paragraph.

VI.

In reference to Paragraph VI of the Second Cause of Action, these defendants deny each and every allegation in said paragraph.

VII.

In reference to Paragraph VII of the Second Cause of Action, these defendants deny each and every allegation in said paragraph.

For a further and separate first defense, defendant union alleges:

I.

That the collective bargaining agreement referred to in the Amended Complaint contained a provision that any differences arising between plaintiff and the defendant union should be settled by arbitration in accordance with said provision in said contract; that prior to the [16] commencement of this action, the plaintiff gave no notice to the defendant union, its officers and agents, of any of the differences which are the subject matter of this action; that plaintiff failed and neglected to submit said differences or any of them to arbitration and still fails and neglects to submit the said differences to arbitration, pursuant to the collective bargaining agreement.

For a Further and Separate Second Defense, Defendant Union Alleges:

I.

That before the commencement of this action, the defendant union duly performed all of the con-

ditions of the collective bargaining agreement set forth in the Amended Complaint on its part to be performed.

For a Further and Separate Third Defense, Defendant Union Alleges:

I.

This Court has no jurisdiction of said supposed First Cause of Action set forth in the Amended Complaint for the reason that plaintiff seeks to reform the collective bargaining agreement, the original of which is on file in this Court, pursuant to stipulation of the parties, which remedy is not within the operation of Section 301, National Labor Relations Act, as Amended (61 Stat. 156) conferring jurisdiction upon this Court.

For a Further and Separate Fourth Defense, Defendant Union Alleges:

I.

In order to induce defendant union to enter into the collective bargaining agreement set forth in plaintiff's Amended Complaint herein and as a condition precedent to the executing of said collective bargaining agreement, plaintiff stated and represented to the defendant union that he was the sole owner of four welding machines and further that he had executed a lease upon certain premises, all located at the Pasco Municipal Airport, Pasco, Franklin County, Washington, all going to establish his financial responsibility.

II.

The statements and representations as made by plaintiff were false and fraudulent and were known to plaintiff to be false and fraudulent when made. [17]

III.

In truth and in fact, plaintiff did not execute any lease of any sort with any municipal or private authority covering the premises allegedly occupied by him and to be utilized as a shop by him within the meaning of the working rules of the collective bargaining agreement, nor did he ever pay any rent to anyone thereupon; further, plaintiff did seek and solicit third persons to join with him in false and fraudulent representations to any investigators of the defendant union in stating that the four welding machines were actually owned by plaintiff when it was known to plaintiff that the machines had been rented.

IV.

Defendant union believed such statements and representations to be true and was induced thereby to enter into said collective bargaining agreement and would not have entered into said collective bargaining agreement had defendant union known the truth with regard to such statements and representations.

For a Further Separate and Fifth Defense, the Defendant Union Alleges:

I.

The alleged collective bargaining agreement set forth in the Amended Complaint is illegal and void

and contrary to public policy in that plaintiff and defendant union agreed to and enforced and maintained and attempted to enforce and maintain a collective bargaining agreement, including among other things, Section 3 thereof, a provision reading as follows:

"Hiring and Discharge

"Section 3. The employers agree to hire all employees covered by this agreement from and through the unions and to retain in its employ only members in continuous good standing in the unions. This is to include foremen, general foremen and superintendents.

"The employers agree to forthwith discharge any employee upon written notice from the union that such employee is not in good standing in the union."

That by reason of executing such a collective bargaining agreement and thereafter attempting to enforce and maintain said collective bargaining agreement, the plaintiff and defendant local union did engage in unfair labor [18] practices within the meaning of Section 8 (a) (3) and Section 8 (b), subsections (1) (A) and (2) of the National Labor Relations Act as Amended (61 Stat. 136).

II.

At the time of executing the alleged collective bargaining agreement, the defendant local union had not been certified by the National Labor Relations Board, pursuant to Section 9, Subsection (c) of the National Labor Relations Act as Amended

(61 Stat. 136) as the collective bargaining representative of any of the employees performing work for the plaintiff as an employer in any operations described in his Amended Complaint or then and there contemplated by plaintiff.

For a Further Separate and Sixth Defense, the Defendant Union Alleges:

I.

That as a condition precedent to executing the collective bargaining agreement described in the Amended Complaint of the plaintiff, the executive board of the defendant union demanded the placement of a bond conditioned upon the sum of $1500 as and for the payment of wages, payroll taxes and related payroll costs; that on or about the 18th day of November, 1954, the United Pacific Insurance Company, a corporation, by and through its agents, the firm of Sherwood & Roberts, Pasco, Washington, did issue its bond No. 229 092, conditioned and limited to the amount of $1500, with the Plumbers & Steamfitters Union, Local 598, being the obligee thereof.

II.

That said bond was retained by plaintiff in his possession at all times and never delivered into the possession of the defendant union; that on or about the 10th day of December, plaintiff did surrender said bond together with a collateral receipt evidencing receipt by Sherwood & Roberts for and on behalf of said bonding company of the sum of $1500

cash collateral to Sherwood & Roberts as agents of said bonding company; that plaintiff gave no notice, orally or in writing, to the defendant union that he had withdrawn the bond upon which the collective bargaining agreement had been executed and has to date given no such notice to defendant union. [19]

III.

That plaintiff, by such conduct, then and there abandoned said collective agreement and has ever since wholly abandoned the same.

Wherefore, defendants pray that the plaintiff take nothing by his complaint and for their costs and disbursements and for such other and further relief as may be deemed appropriate.

/s/ JAMES J. MOLTHAN,
Attorney for Plumbers & Steamfitters Local Union No. 598, RuDell Beames, W. I. Lawson and W. W. Cape.

Certificate of mailing attached.

[Endorsed]: Filed December 19, 1955. [20]

In the District Court of the United States for the Eastern District of Washington, Southern Division

Civil Case No. 978

W. C. DILLION,

Plaintiff,

vs.

PLUMBERS & STEAMFITTERS UNION, et al.,

Defendants.

REPLY

Comes Now the plaintiff above named and replying to the answer of Plumbers and Steamfitters Union Local No. 598 alleges and denies as follows:

I.

Replying to defendants first affirmative defense plaintiff denies each and every allegation there stated.

II.

Replying to defendants second affirmative defense plaintiff denies each and every allegation therein stated.

III.

Replying to defendants third affirmative defense plaintiff denies each and every allegation therein stated.

IV.

Replying to defendants fourth affirmative defense plaintiff denies each and every allegation contained in paragraphs I, II, III and IV thereof.

V.

Replying to defendants fifth affirmative defense plaintiff denies each and every allegation in paragraphs I and II thereof and plaintiff alleges that he does not have knowledge or information regarding the allegations in paragraph II and therefore denies the same.

Replying to defendants sixth affirmative defense plaintiff alleges:

Plaintiff admits paragraph I thereof.

Plaintiff admits that portion of paragraph II whereby it is alleged "that on or about the 10th day of December (1954), plaintiff did surrender said bond together with a collateral receipt evidencing receipt by Sherwood & Roberts for and on behalf of said bonding company of the sum of $1,500.00 cash collateral [21] to Sherwood & Roberts as agents of said bonding company"; and denies each and every allegation contained in such paragraph II.

Plaintiff denies each and every allegation contained in paragraph III thereof.

Wherefore, plaintiff prays that he be allowed the relief prayed for in his complaint.

/s/ WAYNE GLADSTONE,

/s/ SIDNEY C. VOLINN,

Attorneys for Plaintiff,
W. C. Dillion.

Certificate of mailing attached.

[Endorsed]: Filed January 9, 1956. [22]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the Above-Entitled Cause, find in favor of the defendants on the second cause of action.

/s/ J. E. ANDERSON,
Foreman.

[Endorsed]: Filed January 17, 1957. [23]

In the District Court of the United States for the Eastern District of Washington, Southern Division

No. 978

W. C. DILLION,

Plaintiff,

vs.

PLUMBERS & STEAMFITTERS UNION, LOCAL No. 598 of Pasco, Washington; W. W. CAPE; RUDELL BEAMES; WILLIAM LAWSON; J. P. HEAD, d/b/a J. P. HEAD PLUMBING; J. L. MOKLER and JAMES MOKLER, d/b/a MOKLER PLUMBING & HEATING; R. E. RANDOLPH and E. L. TAYLOR, d/b/a RANDOLPH & TAYLOR PLUMBING & HEATING,

Defendants.

JUDGMENT ON JURY VERDICT

This action came on for trial before the Court and a jury, Honorable Sam M. Driver presiding, with

all parties appearing by counsel and the issues having been duly tried, and the jury, on the 17th day of January, 1957, having rendered a directed verdict for the defendants on the second cause of action,

It Is Ordered and Adjudged that the plaintiff take nothing on the second cause of action and that said second cause of action be dismissed on the merits and that the defendants recover of the plaintiff their costs on said second cause of action.

Dated at Walla Walla, Washington, this 17th day of January, 1957.

[Seal] STANLEY D. TAYLOR,
Clerk;

By /s/ THOMAS GRANGER,
Deputy Clerk.

[Endorsed]: Filed January 17, 1957. [25]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the Above-Entitled Cause, find for the Plaintiff in the sum of $40,000 on the first cause of action.

/s/ J. E. ANDERSON,
Foreman.

[Endorsed]: Filed January 18, 1957. [24]

[Title of District Court and Cause.]

ALTERNATIVE MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT AND FOR A NEW TRIAL

The defendant, Plumbers and Steamfitters Union, Local 598 of Pasco, moves the Court for judgment notwithstanding the verdict of the jury rendered on January 18, 1957, or, in the alternative, for an order setting aside said verdict and granting a new trial to said defendant for the following causes materially affecting its substantial rights.

1. Irregularities in the proceedings of the Court, jury and the plaintiff by which the defendant was prevented from having a fair trial.

2. Misconduct of the plaintiff and his attorney in arguing the case to the jury.

3. Accident and surprise which ordinary prudence could not have guarded against.

4. Excessive damages, unmistakably indicating that the verdict must have been the result of passion or prejudice.

5. Error in the assessment of the amount of recovery, the same being too large.

6. There is no evidence or reasonable inference from the evidence to justify the verdict and that the same is contrary to law. [26]

7. Error in law occurring at the trial and excepted to at the time by defendant.

8. Substantial justice has not been done.

Dated this 24th day of January, 1957.

BASSETT, VANCE & DAVIS,
Attorneys for Defendant Plumbers & Steamfitters Union Local 598 of Pasco.

[Endorsed]: Filed January 25, 1957. [27]

In the District Court of the United States for the Eastern District of Washington, Southern Division

No. 978

W. C. DILLION,

Plaintiff,

vs.

PLUMBERS & STEAMFITTERS UNION, LOCAL No. 598, Pasco, Washington, et al.,

Defendants.

JUDGMENT

The issues in this action having been brought on for trial before a Jury, and the issues having been tried, and a verdict having been rendered in favor of the plaintiff, W. C. Dillion, against the defendant, Plumbers & Steamfitters Union, Local No. 598, of Pasco, Washington. Now, Therefore,

It Is Hereby Adjudged, that the said Plaintiff, W. C. Dillion, recover of the defendant, Plumbers and Steamfitters Union, Local No. 598, of Pasco, Washington, Forty Thousand Dollars ($40,000.00) as found by the Jury, with $328.78, costs of action.

Dated this 1st day of February, 1957.

/s/ SAM M. DRIVER,
Judge.

[Endorsed]: Filed February 1, 1957. [28]

[Title of District Court and Cause.]

ORDER ON MOTION FOR JUDGMENT N.O.V. OR FOR NEW TRIAL

This matter having come regularly on for hearing before the undersigned Judge on the 7th day of June, 1957, at Yakima, Washington, upon the defendant Union's motion in the alternative for a judgment notwithstanding the verdict or for a new trial, the plaintiff appearing by his counsel, Wayne Gladstone and John Day, and the defendant, Plumbers' Local Union No. 598, by its attorney, J. Duane Vance, and the Court having heard the argument of counsel and being fully advised, Now, Therefore,

It Is Ordered, Adjudged and Decreed:

I.

The motion for Judgment N.O.V. is denied.

II.

The motion for a new trial should be and hereby is granted unless the plaintiff shall, on or before the 14th day of June, 1957, file a consent to remit from the said verdict the sum of $10,000.00 and take judgment for the sum of $30,000.00 and costs. If such consent be filed by [29] the plaintiff then the motion for a new trial is denied.

Dated this 12th day of June, 1957.

/s/ SAM M. DRIVER,
Judge.

Presented by:

/s/ J. DUANE VANCE,
Attorney for Defendant.

Affidavit of mail attached.

[Endorsed]: Filed June 12, 1957. [30]

[Title of District Court and Cause.]

CONSENT TO REMITTANCE

Comes Now the plaintiff in the above-entitled action, through his attorneys, Gladstone & Day, and hereby consents to remit from the Verdict and Judgment entered in the above-entitled proceedings the sum of $10,000.00, and waives his right thereto and consents to take Judgment for the sum of $30,000.00, with costs.

Dated at Richland, Washington, this 12th day of June, 1957.

GLADSTONE & DAY,

By /s/ WAYNE GLADSTONE,
Attorneys for Plaintiff.

Affidavit of mail attached.

[Endorsed]: Filed June 13, 1957. [31]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the defendant, Plumbers & Steamfitters Union, Local No. 598, a voluntary association, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the judgment made and entered herein on the 1st day of February, 1957, and from the order denying judgment notwithstanding the verdict and for new trial made and entered herein on the 12th day of June, 1957.

VANCE & PETERSON,
Attorneys for Appellants, Plumbers & Steamfitters Union, Local No. 598, Pasco, Washington.

Affidavit of mail attached.

[Endorsed]: Filed July 5, 1957. [32]

[Title of District Court and Cause.]

STIPULATION

Re: SUPERSEDEAS BOND ON APPEAL

In the above-entitled matter, the plaintiff having, after the entry of judgment and before the hearing on the motion for a new trial, caused its writ of garnishment to be issued out of this court, and the court having thereafter upon the motion of the defendants, dismissed said writ upon the posting of collateral in the form of government bonds by the defendant, and the defendant having accordingly posted government bonds in the registry of the court of the face value of $52,000.00 subject to the further order of the court and said bonds remaining in the registry of the court and the court having subsequently denied the defendant's motion for a new trial upon the consent to remittitur filed by the plaintiff, which was so filed, and said bonds still remaining in the registry of the court, and the defendant being desirous of appealing from the judgment herein and all proceedings in connection therewith, now, therefore,

It Is Agreed between the parties thereto as shown by the signatures of the undersigned counsel, that in lieu of the supersedeas bond herein, the aforementioned United States government bonds deposited with the registry of the Clerk of this Court, shall serve as security for the plaintiff during further proceedings, appellate or otherwise, in all respects as a supersedeas bond, and in the event of a final judgment in favor of the plaintiff in this proceed-

ing, the Court may make such order or orders directed to the defendant or its officers or agents, as may be [33] necessary and proper in the premises to secure to the plaintiff such protection as he would have had, had a surety bond been filed herein.

GLADSTONE & DAY,

/s/ JOHN F. DAY,
Attorneys for Plaintiff.

/s/ J. DUANE VANCE,
VANCE & PETERSON,
Attorneys for Defendant.

[Endorsed]: Filed July 5, 1957. [34]

[Title of District Court and Cause.]

ORDER APPROVING STIPULATION IN LIEU OF SUPERSEDEAS BOND

This matter having come regularly before the Court pursuant to the stipulation of counsel hereto attached in which it is agreed that certain United States government bonds of the face value of Fifty-two Thousand Dollars ($52,000.00) and payable to the defendant Union and now in the registry of the Court, shall remain in the registry of the Court, subject to the further order of the Court in lieu of a supersedeas bond on appeal, now, therefore,

It Is Ordered, Adjudged and Decreed that the stipulation of the parties hereto attached be, and is hereby approved in lieu of supersedeas bond herein.

Done this 8th day of July, 1957.

/s/ SAM M. DRIVER,
U. S. District Judge.

Presented by:

/s/ J. DUANE VANCE,
VANCE & PETERSON,
Attorneys for Defendant.

Approved by:

GLADSTONE & DAY,

/s/ JOHN F. DAY,
Attorneys for Plaintiff.

[Endorsed]: Filed July 8, 1957. [35]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND DOCKET RECORD ON APPEAL

Upon motion of the Clerk of this court and for good reason shown, the time to file and docket the record on appeal in the above-entitled cause is extended to and including October 1, 1957, under the provisions of Rule 73(g) of the Federal Rules of Civil Procedure.

Dated this 24th day of July, 1957.

/s/ SAM M. DRIVER,
United States District Judge.

[Endorsed]: Filed July 24, 1957. [36]

[Title of District Court and Cause.]

NARRATIVE ABSTRACT OF TESTIMONY OF WITNESSES

(Testimony of J. P. Head, a defendant called as an adverse witness, tr. p. 47.)

My name is J. P. Head and I am in the plumbing and heating business in Pasco, Washington (tr. p. 47). I was so engaged in this business all during 1954 and was a member of the joint conference board during that year (tr. p. 48). The other members of the joint conference board were Leonard Mokler [1353] and Robert Randolph (tr. p. 48). The appointment to the joint conference board was an informal affair (tr. pp. 48, 49). There were very few meetings of the local joint conference board (tr. p. 49). I am a member of Local 598 of Pasco (tr. p. 49). I joined in about 1936 or 1937 (tr. p. 49). I employ from twenty to sometimes fifty or sixty men (tr. p. 50). Their trade is plumbing and fitting and welding (tr. p. 50). I own the building that the union headquarters are located in and have owned it since 1948 (tr. p. 51). They leased the building in either 1949 or '50 and have occupied it continually since (tr. p. 51).

(At this point, Mr. Head was asked where he obtained the materials used in his business and there was an objection by Mr. Burdell. Mr. Day said: "We have alleged, your Honor, that these parties were potentially and were actually in competition and interstate commerce is a ground of jurisdiction

here. We have plead both the jurisdictional grounds. We have plead competition by Mr. Head with Mr. Dillion and we are, of course, establishing through this line of questioning that Mr. Head also is engaged in the same type of interstate commerce business'' (tr p. 52).)

I know W. C. Dillion. He worked for me in 1952. He was an average welder (tr. p. 53). I never saw the shop that he set up at the Pasco Air Base in 1954 (tr. p. 53). We obtained the men that we employ from Local 598 (tr. p. 53). I have had the occasion of having to wait for men. I eventually got them (tr. p. 53). I first became acquainted with the fact that Dillion was seeking men from Local 598 in November of 1954 (tr. p. 53). I talked to Beames about it. I asked him if Dillion had been granted an agreement (tr. p. 54). Beames said the executive board was handling it (tr. p. 54). If I [1354] wanted any further information I'd have to contact the executive board (tr. p. 55). I talked to Mr. Randolph that same day and explained to him as far as I knew from what I had heard some sort of an agreement had been issued to Dillion that was not one of our agreements, it was some sort of an agreement that was drawn up by their attorney (tr. p. 55). I suggested that Mokler or Randolph call a meeting of the joint conference board to meet with the executive board to see the special agreement (tr. p. 56). The meeting was November 29, I believe, or the 30th. The executive board or some of the executive board was there and one of them brought out

the agreement. It was on a typewritten piece of paper. It was a limited agreement for, I believe, 120 days and limited Dillion to fabrication and pipeline work (tr. p. 57). It was suggested that instead of a special agreement they should give Dillion a Washington state agreement (tr. pp. 57, 58). I bid on the job that Mr. Hopkins had and that Mr. Dillion ultimately got a contract on (tr. p. 60). I submitted my bid to Mr. Hopkins on a lump sum by telephone (tr. p. 61). Equipment necessary to do that job would be four to six welding machines complete with cut-off heads and so forth, the lowboy and crane and all our rigging (tr. p. 63). You can rent an extra machine in two or three places in Pasco (tr. pp. 63, 64). Sixty per cent of my income is from industrial piping and forty per cent from plumbing and heating (tr. p. 64). This job was industrial piping job (tr. p. 64). I have considered setting up a fabricating shop in the Tri-City area (tr. p. 64). I do fabricating for our own work (tr. p. 64). I have a collective bargaining agreement with Local 598, what is termed the Washington state agreement (tr. p. 65). The pipe that was used on this job was procured by the Atomic Energy Commission (tr. p. 71). There is a certain type of pipe manufactured in the state of Washington. [1355] There is clay pipe and culvert pipe and tubing and similar types of pipe along that line. There is no big steel mills (tr. p. 72). At the meeting of the joint conference board on the employer's side there was Mr. Mokler, Mr. Randolph and myself (tr. p. 98). On the employee's side Mr. Lambert, I believe,

and Mr. Carver, I don't recall a Mr. Barrett. I don't know whether Mr. Fuqua was there. I don't know about Mr. Morris. I beleive Mr. Don Edwards was there and I believe Mr. Whittaker was there (tr. p. 99). No minutes were kept. I don't recall any conversation with Mr. Beames prior to the thirtieth day of November, or the twenty-ninth when the joint conference met where Beames informed me that Dillion was not living up to the Washington state agreement (tr. p. 102). The only protest I had at the joint conference board about the agreement that Dillion has was that they should get him a Washington state agreement instead of a special agreement (tr. p. 103). I made no statement at the joint conference board meeting as to the qualifications of Dillion to do the work that he got an agreement to do, but it could have been stated that due to the lack of welders in the area it looked like they were going to have a hard time getting the job done. That was discussed (tr. p. 104). I don't recall making the statement at the meeting of the joint conference board, "What the hell do you mean by giving Dillion the agreement" (tr. p. 109). I did not make statements substantially to the effect that I would sue the union and Hopkins and Beames and see that Dillion never got the job and I did not make a statement substantially to the effect that I would go to hell before I would see Dillion get the job (tr. p. 109). I have never used nonunion plumbers, fitters, or riggers or welders in my work (tr. p. 110). My only shop is in Pasco (tr. 110). I have another building in Richland (tr. p. 110). [1355-A] Thorne

and Marble finished the job that Mr. Dillion had a contract for (tr. pp. 121, 122). There is a well-recognized and well-known distinction between the term "industrial piping work" and the term "pipeline work" (tr. p. 123). I do industrial piping work but not pipeline work (tr. p. 124). I submitted a bid for the particular contract with Mr. Hopkins for the installation of the job that is the subject of this case (tr. p. 127). My bid covered the handling of the pipe, which was either 66- or 72-inch pipe from the time it hit the Hanford Area, that was on railroad cars, until the time that we lowered it into the riverbed (tr. p. 128). The local joint conference board is elected according to the procedures in the Washington state agreement, that is, three employers elected by the employers of their area and three journeymen elected by the local union. Their duties are to hear grievances from the local union against an employer or from an employer against a local union and to iron out those difficulties at a local level, if possible (tr. p. 131). The Washington state agreement is a state-wide agreement between the United Association of Plumbers and Steamfitters and the employers of the state of Washington (tr. p. 131). The type of work that I was bidding on here with Mr. Hopkins was an outfall process sewer line. That is industrial piping (tr. p. 135). I submitted my bid in a lump sum (tr. p. 135). By telephone (tr. p. 136). The entire pipeline that was to be laid there was, if I can recall, 700 feet (tr. p. 137). Mr. Hopkins and I had two different versions of how the job was going to be done.

Mr. Hopkins wanted to use divers and bolt it together on the river bottom and I wanted to float it out and gradually sink it. That was where we had our falling out (tr. p. 138). My bid for this job was approximately $30,000.00 (tr. p. 140). [1356]

End of testimony of Mr. Head.

Testimony of Fred J. Harless (tr. p. 144).

My name is Fred Jackson Harless. I live at 13 North Newport, Kennewick, Washington. I am a member of Steamfitters Local 598, Pasco, Washington, and was in 1954 (tr. p. 144). I am a member in good standing up to this date (tr. p. 145). In 1954 I was the duly elected President of Local 598 (tr. p. 145). I was elected in the Fall election of 1953. Beames' election or appointment as Business Manager ran over into my term (tr. p. 146). He was elected, after I was elected, after my term expired in 1955 (tr. p. 146). Beames was financial secretary and business manager (tr. p. 147). The other offices in the Local were the President, Vice President, Financial Secretary, Secretary or Secretary and Treasurer (tr. p. 149). There was an examining board for steamfitters, and examining board of three members for the plumbers. Each examining board was of three members (tr. p. 149). The body of the union elects four members to the executive board. The Vice President serves as Chairman of the executive board (tr. p. 150). There were three members of the local representing the employees on the joint conference board (tr. p. 150). In November of

1954 the executive board members were William T. Whittaker, vice president and chairman; Mr. Fuqua, Mr. Morris, Mr. Lambert and Mr. Edwards (tr. p. 150). The members of the local joint conference board were L. A. Carver, Art Kuntz, and Mr. Barrett (tr. p. 151). The executive board is a group that is elected by the body to conduct business for the local between meetings (tr. p. 153). The business agent conducts just what the office states, he conducts the business of the local, takes care of the correspondence, and makes contacts for employment for the members, and like all the rest of the officers, is supposed [1357] to look out after the welfare of the local (tr. p. 153). He has the administration of the office and makes dispatches of men to employers (tr. p. 153). In conference with the general organizer he would make determination with regard to jurisdictional strikes or other strike activities (tr. p. 153). The general organizer in this area is Mr. Bilderback, who represents the International (tr. p. 154). During the year 1954 it was the responsibility of Mr. Beames to determine the dispatch of men to local contractors (tr. p. 155). Mr. Beames had two assistants in November, 1954, Mr. Woodrow Cape and Mr. William Lawson, and these men also made dispatches of men from the Local (tr. p. 155). It was the responsibility of Mr. Beames, Mr. Cape or Mr. Lawson to prevent local contractors from obtaining men from any source except the Local (tr. p. 155). They have an assigned area (tr. p. 156).

(Plaintiff's Exhibit 3, Constitution and Bylaws of the United Association of Plumbers and Steamfitters identified and admitted (tr. p. 157, 158).)

Duties of the President are determined from the UA constitution and bylaws (tr. p. 159). It is not common practice for the union to require bond of an employer (tr. p. 161). I was in on the executive board meeting whereby they asked Dillion to furnish a $1,500 labor bond (tr. p. 161).

(Plaintiff's Exhibit 4 marked for identification (tr. 161). Plaintiff's Exhibit 4 identified as a letter from James D. Molthan, attorney, to Plumbers and Steamfitters Local 598 (tr. 162).)

At that time Mr. James Molthan was attorney for the local (tr. p. 163).

(Excerpt 4 rejected (tr. p. 171).)

On November 17, I received special [1358] instructions concerning the handling of Mr. Dillion's request for a collective agreement from Mr. Molthan, the attorney for the union (tr. p. 173). This was unusual (tr. p. 174). I was never requested to sign a collective bargaining agreement for any employer. That was the business of the Business Manager (tr. p. 174). The Business Manager did sign collective agreements with other employers during the period of my office (tr. p. 174). I had occasion, as President of Local 598, to meet with the executive board and discuss the applications of employers for collective bargaining agreements (tr. p. 174). I had no vote but was sometimes asked my opinion

(tr. p. 174). We sometimes discussed the availability of men for a particular contract (tr. p. 175). The executive board would consider the availability of men before they would give a collective bargaining agreement (tr. p. 175). I sat in on an executive board meeting when Mr. Dillion's application for a collective bargaining agreement was being discussed (tr. p. 175). Mr. Lawson agreed to have a suitable agreement drawn up at once for Mr. Dillion (tr. p. 176). It was not to my knowledge the policy of the Local to permit employers to obtain employees from other locals; Employers working within the jurisdiction of 598. The business agent generally contacts other locals to see if they have labor available, but maybe in the case of where he couldn't supply these men it might be agreeable to him. That I couldn't say (tr. pp. 176, 177). I don't know of cases where contractors attempted to go outside the jurisdiction of the Local to get men (tr. p. 177). The executive board generally approved or disapproved contracts for employers and also inspected the man's shop (tr. pp. 178, 179). There were two men at the same time applying for contracts, Mr. McMillan and Mr. Dillion, and at the same executive board [1359] meeting each man was discussed (tr. p. 179).

(At page 183, questioned by Mr. Day:)

Q. "Within the framework of union security, the determination of union security, are there obligations to the employer by the unions which are

generally understood under the terms of union security?"

A. "Well, you have an obligation—I mean for a day's work for your ability, and, naturally, he is your employer, that is bread and butter that you have."

Q. "Is it common understanding regarding the union's obligation to furnish men?"

A. "Absolutely. That is why he has got a contract with the Union."

It is the common understanding that he will use nothing but union men and they agree to wages and hours of work and fringe benefits and that the union will furnish men to the employer (tr. p. 184). In this particular case, the executive board left written instructions to the business agent to man this job (tr. p. 185). A man that belongs to another local of the UA coming into the jurisdiction of 598 will bring a clearance card. It is a traveling card and if he does not have it he takes a ten-dollar deposit and writes for the card. There isn't any attempt to restrict that to men who join the local originally (tr. p. 190). A man who comes in on a clearance card is in as good a standing as anybody else (tr. p. 190). It has been necessary numerous times in recent years to go out and recruit men for the Tri-City area (tr. p. 191).

(Plaintiff's Exhibit 2 admitted in evidence (tr. p. 194).)

I understood that Mr. Dillion was going into the fabrication business, not the pipeline (tr. p. [1360] 204). A pipeline agreement to my knowledge can only be given by the International and it is only handled out of one local in Oklahoma. This Local 598 and no other local could give a straight pipeline agreement (tr. pp. 204, 205). Another way of recruiting new men is by getting new members (tr. p. 217). I knew that Dillion needed men during November of 1954 (tr. p. 217). A new member would have to pass an examination and have the required five years' experience and pay an initiation fee equal to the wages for 100 working hours (tr. pp. 217, 218). That would take roughly a month (tr. p. 219). The executive board discussed the equipment Mr. McMillan had to have to commence business with (tr. p. 219). Mr. McMillan had four walls and a little box that contained approximately $15 worth of tools and that they couldn't do one job with, let alone supply journeymen and four fifths of whiskey (tr. p. 220). He furnished a bond (tr. p. 220). I think the minutes of the executive board show that they stipulated what their decision was. I can't repeat them word for word, but I think there was something on the order that they would give him (Dillion) a Washington state agreement within ninety days if he didn't break the Washington state agreement within 90 days that he would have a full Washington state agreement (tr. p. 226).

(End of testimony of Mr. Harless.)

(Testimony of Witness Marquard H. Arndt.)

My name is Marquard H. Arndt (tr. p. 230). I am chief of the construction branch for the Atomic Energy Commission in Richland, Washington. In November of 1954 I was chief of the contracts and report branch (tr. p. 231). My job is to supervise a group of people who put together technical plans and specifications and prepared contracts ready for public advertising, bidding and award of contracts (tr. p. 231). [1361] I caused, 1954, to be prepared under my direction a request for bids on an outfall project in what is described as area 100-B in the Hanford Project (tr. pp. 231, 232).

We use water from the Columbia River to cool our reactors at the Hanford Works. After this water has gone through a reactor it is quite hot physically and thermally, also radioactive. That water is then dumped into a big retention basin where it lays for a certain period of time until the water has a chance to cool off, radioactively and thermally. After tests are taken on it, and it is safe to do so, it is then dumped back into the Columbia River. This structure that we are talking about here is about 90 feet of pipe leading up to an outfall structure, which is about the size of a small two-story house called a surge chamber made of reinforced concrete. From this about 700 feet of 66-inch pipe leads that water out to the middle of the Columbia River, where it is introduced into the river, and, of course, out there mixed with the whole Columbia River sufficiently diluted to be absolutely

harmless. The reason for a surge structure is that the reactor in this case sits up on a bluff and from there the water has to run down to this retention basin and from there it gets into this particular project of the contractor that we are talking about, and when it gets to this surge chamber then it drops off down this bluff and goes off over into the river. The reason for the surge chamber is it is a building—if the surge chamber were not there and this intermittent flow of so much water, that water rolling down that hill intermittently would pull a vacuum inside the pipe and the air pressure on the outside of the pipe would collapse it. Of course, destroy the system. So this surge chamber is open to the atmosphere. It has an overflow out one side, a concrete sluiceway to introduce any [1362] overflow water that might go over that way down to the river and when the water stops, just some air then is admitted to the stream going into this pipe down the side of the bluff and that prevents the pipe from collapsing (tr. pp. 232, 233). The pipe is 66 inches in outside diameter and the wall thickness of the pipe is ½ inch (tr. p. 233). A number of similar structures have been built on the Hanford Project prior to this contract that we are talking about here (tr. p. 234). Mr. Head has had a more recent contract in which he installed a similar facility not prior to this project (tr. p. 234). Mokler Plumbing and Heating did not and neither did Randolph and Taylor (tr. pp. 234, 235). I am an electrical engineer by training but have worked in civil engineering and some mechanical engineering (tr. p. 235).

I am a professional engineer licensed by the State of Washington (tr. p. 235). I requested bids on this particular project (tr. p. 236). A fair cost estimate was prepared prior to the time bids were called for (tr. p. 236). The fair cost estimate was $125,000.00 for this pipeline job (tr. p. 236). A fair cost estimate is an estimate prepared by our own government estimators which is sealed in an envelope and opened at the time of the bid opening with the rest of the bids. It is necessary for the Federal government to have some idea before they award the low bidding contractor whether the low bid that is submitted is a reasonable price or not (tr. p. 237). The fair cost estimate in this case was $125,000.00. That was for doing the work, building the 90 feet of pipe, putting in the surge chamber and building the other 700 feet of pipe down to the river and all necessary digging and so on in connection with it plus the reinforced concrete sluiceway, plus quite a bit of riprap along the bank (tr. pp. 237, 238). The lowest bid that [1363] we considered responsive completely to the bids was that of Lewis Hopkins Co. of Pasco for $137,777.00 (tr. p. 238). We rejected the bid of the Cisco Construction Co. as not responsive (tr. p. 238). This was really all one type of work and for that reason put into all one contract (tr. p. 239). We made a separate breakdown for the mechanical portion (tr. p. 239). By the mechanical portion of the job we usually think of as that portion of the job that is predominantly done by the craft known as United, belonging to the United Association of Plumbers and Steamfitters. The total amount of the

fair cost estimate for the mechanical portion of the work was $25,000.00 (tr. p. 239). That portion of the work was to bring the 90 feet of pipe to the inlet side of the surge chamber and that came up just flush with the inside wall of the surge chamber and the outgoing pipe started about 5 feet within the surge chamber and went down the bank 700 feet out to the middle of the river (tr. pp. 239, 240). It was attached to the surge chamber on the inlet side where approximately 3-foot piece of this 66-inch pipe just cast into place in the reinforced concrete. The way this thing has to be done, the carpenter craft has to build the wood forms for the reinforced concrete and then the pipefitter craft had to jig this piece of 3-foot or 66-inch pipe into place; that is, 3 feet of length, longitudinal length of pipe, that is 66-inch pipe. Now that has to be jigged into place by the pipefitters working with the carpenters there and then after that is done then the labor craft actually places and vibrates the concrete into place around that so that on the inlet side, that is the way the pipe was put into place (tr. p. 240). The Lewis Hopkins Co. would have the carpenters who put in the forms for the concrete around this particular contract and he would probably have the laborers who placed the concrete [1364] in and vibrate it. We figure the fair cost estimate, we figure profit and overhead (tr. pp. 244, 245). We took direct labor and material estimates from our experience. To that we add 10 per cent for overhead and 10 per cent for profit for the piping sub-contractor's fair cost estimate that we prepare and

then we figure 10 per cent on top of that for the general contractor (tr. p. 245). The first 10 and 10 for the mechanical contractors is a cascaded percentage, or 21 per cent is added to the mechanical sub-contractor's estimate. In estimating the fair cost estimate, we figured for the mechanical sub-contractor's portion 10 and 10, and then an additional 10 per cent for the overhead profit and the general contractor which eventually in this case became Lewis Hopkins (tr. p. 252). The total percentage of overhead and profit as allowed for the mechanical portion of the contract to the general contractor would have been the direct cost plus 33 per cent. When we figured the fair cost estimate of $25,000.00 it was not that 33 per cent of that $25,000.00 overhead and profit. Of that $25,000.00 included 21 per cent of the labor and material direct cost (tr. pp. 252, 253). The real cost of the mechanical portion to the government would be $25,000.00 plus 10 per cent or $27,500.00. Lew Hopkins' bid was somewhat higher for the general contract than the fair cost estimate (tr. p. 253). The bid was awarded Lewis Hopkins on October 26, 1954, and it was to be completed within 120 days after notice to proceed (tr. pp. 253, 254). The notice to proceed was issued on November 17, 1954, and acknowledged by the Hopkins Company on November 19, 1954, and his time for completion ran from the 19th so it was to be completed within 4 months after November 19 (tr. p. 254). March 19, 1955, was the completion date (tr. p. 254). When we set the completion times for these contracts we [1365] take into consideration

the availability of labor supply in the area to complete the contracts (tr. p. 254). We are advised by authorities on this matter as to the availability of labor in the area (tr. p. 254). The lack of any particular craft involved in this work, the lack of supply for any particular type of craftsmen, would substantially affect the performance time (tr. pp. 254, 255). We considered that pipefitters were available to complete this work within 120 days (tr. p. 255). The completion certificate for the contract was signed on February 17, 1955 (tr. p. 255). At that time I would not have been directly advised of any major delays in the performance of contracts. I would see them in the form of reports at that time (tr. p. 256). We have no records that show a lack of pipefitters to complete this job or shortage of pipefitters to complete this job (tr. p. 257). The AEC had people in the field directly supervising this contract whose duty was to report any labor shortage (tr. p. 257). I know Mr. W. C. Dillion (tr. p. 257). I had contact with Mr. Dillion during 1954 (tr. p. 258). In terms of dollars, the estimate of profit not including overhead, but profit on the mechanical contract, that the mechanical contractor would have made from that job on the basis of our estimate was $2,500.00. It is roughly 10 per cent of $25,000.00, but you are adding 10 per cent profit to another figure to arrive at $25,000.00, so it is something different, a little bit different than $2,500.00, it is very close to $2,500.00, a little bit more than $2,500.00 (tr. p. 269). And that is the

profit, which, according to our estimates, the mechanical contractor would have made on the job (tr. p. 269). If the general contractor was to do everything except actually weld the pipe, such as furnish the cranes, the lowboys and some welding machines and haul the material to the [1366] job, it is possible that the cost of the mechanical contract would have been as low as $14,000.00 or within shooting distance of a figure like that (tr. p. 271). In that case, the mechanical contractor would have gotten a profit of around $1,400.00. When we figured $25,000.00 we just considered that the mechanical contractor would do all his normal work (tr. p. 272).

(Testimony of W. C. Dillion (tr. p. 279):)

My name is William Chester Dillion. I am a plaintiff in this action (tr. p. 279). I have been a welder since 1936. I first went into the union in 1939 up in Lima, Ohio. The boilermakers had all the pipeline work at that time. I was raised mostly in Boulder, Texas. I took my welder training at the White-Miller Boiler works in Houston, Texas. That is where I first started. I went to about the fifth or sixth grade and then they put me in high school. I started my welding training in 1936. I didn't join the union in 1939. I worked on a permit with the union with the Boilermakers Union in Lima, Ohio. I joined the Boilermakers in 1940 or 1941. I am now a member of the Plumbers and Steamfitters Union and have been since I believe 1942, either 1942 or '41 (tr. p. 281). In 1952 I lived at North Richland. I have been a member of the Plumbers Union ever since I joined

in 1942 (tr. pp. 281, 282). I have followed the welding trade ever since 1936, 1952. I am married and have three children (tr. p. 282). I believe it was on September 7 the first time that I went to the executive board (tr. pp. 282, 283). I had planned all the way when I come in here in 1948 to go into business. I seen what it was like and I had that in mind all the time, you know, to go into business here (tr. p. 283). In 1949 I went down and talked to Mr. Larish about going into business here. He was the business agent for 598 at the time (tr. p. 283). He told me that Charlie Gammett would [1367] be a good man to go in with (tr. p. 283). I recognized it takes a sum of money to get your equipment and what not to go into business (tr. p. 284). In 1952 I started working on it. I started studying how other people was bidding work and everything like that. Other contractors was bidding work (tr. p. 284). I bought some buildings in the area and I started building a home. I knew I had to have some capital and some backing so I started building me a home and I thought I could finance that in order to get backing (tr. p. 284). I was working and following my trade during that time (tr. p. 284). I worked on my home off and on, when I wasn't looking at prints and stuff like that and the Journal and studying them I was working on my home (tr. p. 285). I talked to representatives of Local 598 around June or July the first time in 1954 and then in September (tr. p. 285). I talked to the executive board. Before June or July of 1954 I had talked to Mr. Beames (tr. p. 285). I talked to him I think on September 7 (tr. p. 286).

I talked to Mr. Lawson a long time before that, maybe a year (tr. p. 286). Lawson is an assistant business agent for 598 (tr. p. 287). That would have been in the summer of 1953. At that time I asked Lawson about going into business with me (tr. p. 288). He said he didn't have no money so I forgot him about going into business at that time (tr. p. 289). He said he thought a fellow could make some good money if he got set up (tr. p. 289). I had other conversations with him in 1954. I dealt with him all the time from October, somewheres in October. I dealt with him all the time up until—I had talked to him I know when I would be down to pay my dues or something like that and I would see him and he knew that I was trying to get set up for business (tr. p. 290). I talked to him all along about going into business for myself (tr. p. 291). This matter of my going into business was [1368] presented to the body of the union around June or July of 1954 (tr. p. 291). I also talked to Mr. Beames about going into business during the summer of 1954 (tr. p. 291). It was in October. Oh, I guess September 7, when I talked to him (tr. p. 292). It was some time in October that I talked to him first (tr. p. 293). The first formal meeting I had with the executive board was November 16, no, September the 7th (tr. p. 294). I had talked to the executive board in June or July—I attended a meeting of the executive board and I told them I wanted to go into business (tr. p. 295). At that meeting in June or July I just went in and told them I was

figuring on going into business so I wanted an agreement with the Local so I was read off, I think, before the body and they asked the body that I was wanting an agreement with the Local (tr. p. 296). At the meeting on September 7, 1954, that was with the executive board of Local 598 and took place at their hall in Pasco (tr. p. 296). I went there and I told them that I wanted to go into business and I would like to put a shop in Enterprise, Washington, and they told me if I would get me a shop out there, put me a telephone in, that they would present me an agreement, and you know, everything like that, but I would have to live up to everything, you know (tr. pp. 296, 297). Enterprise is a little unincorporated place west of Richland and was in 1954 (tr. p. 297). My purpose in talking over my business plans with the executive board was you've got to find out if it is all right to put in a business some place and if they won't let you put in a business, why, there ain't no use of putting—if you can't get no men, why, if you put in a business some place, why—(tr. p. 297). At the time I was consulting with them I didn't ask for no men, I was just trying to set up a place of business where the local would be satisfactory with them, so I could eventually get some men (tr. pp. 297, 298). [1369] The meeting on September 7 was just a short meeting there, it didn't last too long and there was one of the fellows was off of that at the time (tr. p. 298). There was nobody besides myself and the executive board there (tr. p. 298). The next meeting I had with the executive board was on the 15th

of November. Before this meeting on November 15 I had contacted Mr. Beames in September or October (tr. p. 298). I seen him at his office (tr. p. 299). I asked Mr. Beames about putting in a shop in Enterprise and he said no he wouldn't go along with that and I asked him about the Y. He said no he wouldn't go along with that either. He told me the reason, he said you just pay travel time from your shop to the job and he said "We will get travel time from the union hall to the job." And I said "Well, if you will let me put in out there, why I will pay the same travel time from the union hall to the job" and he said "No, you will have to either come into Kennewick or Pasco." So then I had to start looking and find me a place either in Kennewick or Pasco (tr. p. 299). And I did find a place at the Pasco Air Base, Building 118 (tr. p. 299). The City of Pasco rent out the buildings. It was in the city limits. I found it out before I went out and leased the building (tr. pp. 299, 230).

(Plaintiff's Exhibit 5 marked for identification (tr. p. 300).)

I talked to the executive board on the 15th and on the 16th (tr. p. 300). Before this, after I'd set up my shop and before my first meeting with the executive board I had talked with Bill Lawson (tr. pp. 300, 301). This was in his office in Local 598. I had asked him about getting an agreement, I think (tr. p. 301). I discussed my shop with him and its location and getting set up (tr. p. 302).

(Plaintiff's Exhibit 6 marked for identification (tr. p. 302).) [1370]

I asked Mr. Cotton if I could lease that building at the Pasco Airport and I signed the lease (tr. p. 302). I went to the city hall and paid the rent on it and I went to the power company and put up $100 for my power (tr. p. 302).

(Plaintiff's Exhibit 7 marked for identification (tr. p. 302). Plaintiff's Exhibit 8 marked for identification (tr. p. 302). Plaintiff's Exhibit 9 marked for identification (tr. p. 303).)

Mr. Cotton was manager of the Pasco Airport (tr. p. 303). Exhibit 9 is the lease I signed. That is my signature. It was prepared in Mr. Cotton's office (tr. p. 303).

(Plaintiff's Exhibit 9 admitted in evidence (tr. p. 304).)

Exhibit 6 is the city treasurer's receipt that I paid on the building for a lease to the city. I gave them $70 (tr. p. 305).

(Plaintiff's Exhibit 6 offered in evidence (tr. p. 305). Plaintiff's Exhibit 6 admitted in evidence (tr. p. 306).)

I had my discussion with Mr. Cotton about leasing space at the Pasco Airport either in September or October (tr. p. 306). This instrument, Exhibit 9, I got the first day I was over there (tr. p. 306). Exhibit 8 is telephone service (tr. p. 307). I got it

from the telephone office (tr. p. 308). That was for the telephone and building 118, for the phone I had in the shop at the Pasco Airport (tr. p. 308).

(Plaintiff's Exhibit 8 admitted in evidence (tr. p. 308).)

Exhibit 7 was put up for my power in the shop (tr. p. 308). This $100 was put up for the power (tr. p. 309).

Plaintiff's Exhibit 7 admitted in evidence (tr. p. 309). [1371] Exhibit No. 5 is my contractor's license I got in Kennewick (tr. p. 309). I got it from the city (tr. p. 310). From the city of Kennewick (tr. p. 310). This is just across the river from Pasco (tr. p. 310). I got a Kennewick city license because Mr. Beames told me I had to go either in Kennewick or Pasco. I didn't figure it made any difference where I got it, whether I got it in Pasco or whether I got it in Kennewick (tr. pp. 310, 311). The airport was in the city limits in Pasco in '54. (tr. p. 311). I wanted to qualify to do business in the city of Kennewick as well (tr. p. 311).

(Plaintiff's Exhibit 5 admitted in evidence (tr. p. 311). Plaintiff's Exhibit 10 for identification marked (tr. pp. 311, 312). Plaintiff's Exhibits 11, 12, and 13 were marked (tr. p. 312).) Plaintiff's Exhibit 10 is one of my business cards, Dillion Pipe Fabrication and Pipeline Contractor, that I had printed up when I went into business (tr. p. 312).

(Plaintiff's Exhibit 10 admitted in evidence (tr. p. 312).)

Plaintiff's Exhibit 11 is a Columbia Basin News where I had my cards and stationery printed. It is a receipt for my cards and stationery (tr. 313).

(Plaintiff's Exhibit 11 admitted in evidence (tr. p. 313).)

Plaintiff's Exhibit 12 is a receipt for payment on a telephone bill (tr. 313).

(Plaintiff's Exhibit 12 admitted in evidence (tr. p. 314).)

Plaintiff's Exhibit 13 is from the Seattle First National Bank in Pasco for checks being mailed (tr. p. 314).

(Plaintiff's Exhibit 13 offered in evidence (tr. p. 314).) [1372]

This is a bill for printing my name on some checks (tr. p. 315).

(Plaintiff's Exhibit 13 admitted in evidence (tr. p. 315).)

I have been gathering up tools all the time and buying them—I started acquiring my tools and equipment in '53 (tr. p. 315). I acquired tools over a period of time. I would go to sales and stuff like that and buy tools and if I would get a good buy on some tools that's what I would do (tr. p. 315). I traded a building for a winch truck (tr. pp. 315, 316). In 1954 I had two welding machines and a winch truck and pipe dies, pipe wrenches, cutting torch, all kinds of crescent wrenches and stuff like that, see, pipe wrenches (tr. p. 316). I had a bunch

of pipe, about $3,000 worth of pipe on hand (tr. p. 316). The next meeting with the executive board meeting on November 15, 1954, was a special meeting (tr. p. 317). It was held on a Monday (tr. p. 317). We met at the Local 598 in Pasco. Present was Red Fuqua, Don Edwards, Bill Whittaker, Dick Lambert and Blackie Morris (tr. p. 317). I told them that I wanted to get an agreement with the local and wanted them to—asked them what I had to do to get the agreement with the local and they told me about the bond, what I had to do, and so they said, "You go over and get a bond just like McMillan had." (tr. pp. 317, 318). So then I went over to Jim Molthan's office and when I got there Jim wasn't there, so Ruth his secretary and wife, she wrote me up an agreement and I went back (tr. p. 318). Jim Molthan was the attorney for the local at the time. I discussed my shop with them at the meeting on November 15. I had gone through these preparations of setting up my shop (tr. p. 318). As far as the executive board is concerned, they wanted to know everything you know, what [1373] you had and everything like that (tr. p. 318). They made no attempts themselves that night to determine what I had (tr. p. 318). The executive board did at one time look at my shop (tr. p. 318). I believe that was on the 16th, it could have been on the 22nd, I'm not sure (tr. p. 319). I had another meeting with them on the 16th of November. The same people was there (tr. p. 319). I don't know whether that was the night where I went down and got Bill Lawson or not to come down. He was the assistant

business manager (tr. p. 319). On the first meeting on November 15, they asked me if I had talked to any of the business agents and I told them I had. They wanted to know who and I told them I had talked to Bill Lawson (tr. pp. 319, 320). This was a special meeting on Monday night (tr. p. 320). On that night I discussed with them my shop. I believe that is the night they went out to the Pasco Airport and looked at my shop (tr. p. 319, 320), that is the members of the executive board (tr. p. 320). On November 16, all of the members of the executive board were again present and I again discussed with them the proposition of going into business (tr. p. 321). Mr. Lawson was there (tr. p. 321). I went out to his house and got him out of bed and brought him down to meet with them (tr. p. 321). You've got to have a business agent there to discuss you know, everything with him and then he goes and gets a lawyer to write up an agreement (tr. p. 321). They indicated they would want to have a business agent there during the course of the discussion (tr. p. 322) and I went and got him out of bed and brought him down to the executive board meeting (tr. p. 322). They authorized him to give me a satisfactory agreement (tr. p. 322). I am referring to a collective bargaining agreement with the local (tr. p. 322). This is the type of agreement that specifies working conditions and pay rates and the like of that (tr. p. 322). [1374] Bill Lawson said if the executive board would leave it to him that he would get me a satisfactory agreement that I could work

under (tr. p. 322). The executive board said "As long as he gets a satisfactory agreement that's all we want." (tr. p. 323.) The equipment that I mentioned that I had acquired previously was not then at my shop, it was at my home except one welding machine. I made a deal with Mr. Jack Cooney for one welding machine (tr. p. 323). Mr. Jack Cooney runs the school out there at the Pasco Air Base. He was moving out of the shop here that I rented and moving in a bigger shop (tr. p. 323). The shop that I was getting had been used for welding previously (tr. pp. 323, 324). He had used it as a school and he was moving out (tr. p. 324). He said he would leave me all the switch boxes and I was already set up for business then. There was one welding machine left there that I was going to rent off of him (tr. p. 324). I think there were 13—12 or 13 welding machines, something like that in the shop on the night the executive board went out there (tr. p. 324, 325). This shop was one building, not just a room, it was one building (tr. p. 325). Besides the switch boxes and the welding machines that were there I had a desk and Jack told me he was going to leave a table there, just a little steel table (tr. p. 325). At the time they went out to look at it, I had at that time a desk, the welding machines, although the welding machines belonged to the school, except the one that I made arrangements with Jack to rent and the desk was going to be left there for my use (tr. p. 325). The desk would be left there as long as I wanted to lease the building (tr. pp. 325, 326). The meeting of the executive board on November 16 was

on a Tuesday night ("Question: Did you get a Washington State agreement, a collective bargaining agreement, after that [1375] meeting, Mr. Dillion?"

"A. Well, the next morning, I had taken Bill Lawson home that night and we stopped by a bar and had a beer, I bought him a couple of beers, and then I had taken him on home, and he told me, he said, 'Well,' he said, 'Tater,' he said, 'I believe you will do good if you can get men.' And he said, 'I think you can get plenty of men.' And I thanked him, I told him I appreciated anything he could do for me when I was just getting started.

"So I had taken him on home and he said, 'Molthan is in Seattle and as soon as he gets back, why,' he said, 'I will contact him and——' " (tr. pp. 326, 327).

On the evening of the 16th at the executive board meeting I was told I had to have my bond, a $1,500 bond (tr. p. 327). I would have to have a bond and give it to the Local so that it would pay, you know, in case I didn't have enough money on a payroll to pay the men. That was the stated purpose of the bond (tr. p. 327). They said I would have to get an agreement with the Local and then go see Dunning and Ray or Sherwood and Roberts to get the bond (tr. p. 327). They indicated Mr. Molthan would draw up the papers (tr. pp. 327, 328). They indicated that is who I should see about the bond and the collective bargaining agreement and he was the

attorney for the Local and he had his office in Kennewick (tr. p. 328). I saw Molthan the next morning, the morning of the 17th (tr. p. 328. I saw him at his office in Kennewick (tr. p. 328). He called Bill Lawson over to his office while I was there (tr. p. 328). I told him about the job if I got an agreement with the local that I could get in the area (meaning the Hanford Works Area). The job I am speaking of is the contract with Mr. Hopkins that I ultimately got covering work in the Hanford [1376] Area in 100-B. That 66-inch line that Mr. Arndt testified to (tr. p. 329). I discussed it with Mr. Molthan and Mr. Lawson in Mr. Molthan's office (tr. p. 330). Mr. Molthan written up this collective bargaining agreement and he didn't hardly give Bill a chance to talk because he was trying to put another concern, steel plant, in (tr. p. 330). I discussed the bond in Molthan's office (tr. p. 330). He called Ike Myers over at Sherwood and Roberts and told him on my agreement that I had with the Local, he said, "If there is any flaws in there, erase it and go ahead and write him a bond." I had taken this bargaining agreement with the local to the hall and there was a girl in there by the name of Bess, I believe that is Mr. Beames' secretary. She wrote it up, all the copies, and I had one and they had one or two. I don't know just how many there were (tr. p. 330, 331). That was the agreement with the local Mr. Molthan gave me to have Bess type out (tr. p. 331). On the 17th I went to see the bonding company that day. I saw Ike Myers, a representative of Sherwood and Roberts (tr. p. 331). Mr. Molthan, the attorney for the local,

told me about the bond, that is the way to keep guys, contractors, out. They will write up an agreement where no bonding company will bond them and that is the reason that he said "That is the way we keep other contractors from getting an agreement with the Local" (tr. p. 332). Exhibit 14 is the agreement that I have testified to that Mr. Molthan prepared a hand-written draft of, and that I discussed with Mr. Molthan in the presence of Mr. Lawson and typed up in the local office by Mr. Beames' Secretary, Bess (tr. p. 334). I asked Bill Lawson to sign it and he said Rudy Beames was in Tulsa and he said that he would have to sign it, I mean he was referring to Rudy Beames would have to sign it (tr. p. 335). This was on the 17th. On the 18th of November, Rudy Beames came in. I believe [1377] he was in Tulsa and he came in about 2:00 o'clock, somewhere about there that evening and I asked him to sign it and he said "Well," he said, "I am a little tired," and he said "I will come down there in the morning and sign it or have Bill Lawson or Woody Cape sign it" (tr. p. 335). On the 19th I went back to the Local and saw Beames and Lawson. I don't recall which one I seen first but I guess it was Mr. Beames because Bill had already told me that he would have to sign it (tr. p. 336). I asked him about signing it and he said, "Well," he said, "see Bill." So I went up to see Bill, Mr. Lawson (tr. p. 336). Mr. Head was in Bill Lawson's office at that time and when I first walked in and I walked on back in the back and seen Mr. Beames and I asked him about signing it and he said "Well,

go on up and see Bill." He said, "He will fix you up. As soon as he comes in he will fix you up." So I went up there and then I seen him and Head, Mr. Head is up there together, so when I went in the office, when I went up there to see Bill, why he said "Well, I can't sign it, you will have to get Rudy to sign it" (tr. p. 337). Mr. Head and Mr. Beames were together in Mr. Beames' office (tr. p. 338). That was after I went back to see Mr. Lawson (tr. pp. 338, 399). Beames came in there at quarter to twelve and I asked him to sign my agreement again and he said "Well," he said, "I don't know whether your agreement calls for this contract or not." And Head come by there just at that time and he said "Rudy, I'll buy your dinner up at the Elks," and then they went to the Elks for dinner (tr. p. 339). Rudy is Mr. Beames (tr. p. 339). On Thursday the 18th I saw Mr. Beames. He had just gotten back from Tulsa so I came back then Friday the 19th and saw him and Mr. Lawson in the morning (tr. p. [1378] 342). On the afternoon of the 19th, I went down to Lew Hopkins' office (tr. p. 342). In the afternoon of the 19th I saw Rudy and Bill Lawson (tr. p. 343). Lawson told me he couldn't sign my agreement. He said "I can't sign it." He said "Rudy will have to sign it" (tr. p. 343). This was after Mr. Head had mentioned to him going to the Elks for lunch (tr. p. 343). When I went in there Rudy had said "Well, Bill, we'll fix you up," that morning, I believe. I believe it was on the 19th and Bill—no, I don't know whether that was the day that he signed the agreement or whether it was on the 22nd (tr. p.

343). Beames told me that him and Head was going out to the AEC to find out if this was my contract or not. They was going to look over the prints (tr. p. 344). That conversation took place in Beames' office (tr. p. 345). On the afternoon of the 19th, Friday, 3:45, I spent almost all day the rest of the day in the union hall waiting for them to come back so I could talk to them. I was trying to get my agreement signed but I didn't see him any more that day (tr. p. 345). I believe I went to his house the next day on Saturday, that is, Beames' house, on Saturday, the 20th (tr. p. 345). I saw him there. I asked him about, you know, getting by agreement signed and he said well, he would have to see Jim Molthan and he said they didn't know whether that job called for my contract or not (tr. p. 346). He was going to see if my agreement covered that contract (tr. p. 346). I didn't have a contract to Mr. Hopkins at that time, but Beames knew what work I was contemplating doing (tr. p. 346). Over the week end, the 20th and the 21st, I was running around seeing the members of the executive board and the business agents. The executive board and Bill Lawson and Mr. Molthan (tr. p. 347). I seen Whittaker, Fuqua, Don Edwards and Lambert (tr. p. 348). I don't know whether it was this Saturday or whether it was the next Saturday I saw Mr. Beames (tr. p. 348). [1379] But I was seeing members of the executive board at their homes. I talked to each one of them, on Saturday and Sunday (tr. p. 348). On Monday, the 22nd I seen Mr. Beames, Mr. Lawson and Mr. Cape (tr. p. 349). On the 22nd, we had a

special meeting of the executive board at night at Local 598 (tr. p. 349). I told them that I had to have some men, that I had to get this signed, so they told me that they had authorized Rudy Beames to give me a statisfactory agreement, and so that is about all they could do (tr. p. 349). Beames had possession of this draft of the agreement during that time (tr. p. 349). On the 23rd, I went to Mr. Beames' house and asked Mr. Beames if he would come down and meet with the executive board and he said he wouldn't meet with them no place at no time and I asked him if he would come down and unlock his office up to get my agreement out and he said yes, he said, I will do that, and he didn't come down, he sent Woody Cape down to unlock (tr. pp. 349, 350). I can't recall whether that was the evening of the 22nd at the time of the executive board meeting or not but I did get the agreement out of the files (tr. p. 350). It wasn't signed then, it was signed on the 23rd. That is when I picked it up, on the 23rd, and it was signed when I picked it up. It had been signed by Mr. Lawson (tr. p. 350). The conversation I had with Mr. Beames when he said he wouldn't meet with the executive board was at his house and I believe Mr. Wooten was present (tr. p. 351). When I went in the office on the 23rd, I went back to Rudy's office and Bill had told me, he said "I've got you fixed up" and Mr. Lawson said "I've got you fixed up." As I walked by to go back to Mr. Beames' office, and so I went back there and Bill was there and he picked up the agreement. We went up in his office and I signed it and Mr. Lawson

—I signed it up in Mr. Lawson's office, but he had already signed it, Mr. Lawson had (tr. p. 351). At that time, I [1380] told him I was going to need some men and in just a couple of days because this pipe was coming in and I had to get it off the tracks. I didn't have very much time to get it off (tr. p. 351), (tr. p. 352). At that time he was informed of the job that I was contemplating doing for Mr. Hopkins (tr. p. 352). As to my contract with Mr. Hopkins, I had to have UA men you know, in order to do this job and I had to have an agreement with the Local to get union men, see, and I had to get enough men you know, to man the job (tr. p. 352). At that point the only obstacle to doing the work was getting the men (tr. p. 352). I mentioned to Mr. Lawson at that time that I would be needing men (tr. p. 352). On Wednesday the 24th I went in and seen Mr. Beames and I also seen Mr. Lawson in Local 598 (tr. p. 353). I went in and I told Mr. Beames, I said "I'm just getting started," and I said "There is Roy J. Smith out here, a welder, and Blackie Sandford, he is a rigger," and well he is just an all-around good man, and I said "They are good men," and I said, "I would appreciate it if you let me have them," and he said "I know they are good men," and he said "We'll see." And so I never did get those men though, and I told Bill Lawson, I said, "There is Mr. Wooten," I said, "I would like to have him for foreman if you could give him to me," and he said "I'll call Ray and see," because I was just getting started out, and you know, I wanted to get a little help, see. They

did not give me those men (tr. p. 353). They did not dispatch those men to me at that time (tr. p. 354). Beames didn't say anything at that time whether he would or would not give me the men I had requested. This was on the 24th (tr. p. 354). Lawson didn't say anything about whether he would or would not give me those men at that time (tr. p. 354). On Thursday, the 25th, that was Thanksgiving. I went down to Lew Hopkins' office and went over the prints with him, and [1381] discussed that morning how we was going to put this pipe in the river. I had had conversations with him about that prior to that (tr. p. 355). On the 23rd, I had shown him the agreement (tr. p. 355). On the 26th, the day after Thanksgiving on a Friday, I seen Mr. Beames, Mr. Lawson and Mr. Cape. I didn't miss none of them. When I saw Bill Lawson I asked him about getting men. He told me, he said "I can't give you no men," he said, "That's all. You'll have to see Rudy." He said, "Rudy will have to give you men," (tr. pp. 355, 356). I saw Rudy then. Rudy said he didn't know whether my contract called for that job or not and he would have to see Mr. Molthan and meet with him, and that was the extent of my conversation with those parties at that time (tr. p. 356). That signature on the top of the page on Exhibit 14 is mine (tr. p. 357). The one at the bottom of the page is Bill Lawson's (tr. p. 358).

(Plaintiff's Exhibit 14 admitted in evidence (tr. p. 358).)

Plaintiff's Exhibit 2 is the Washington State Agreement referred to in Exhibit 14 (tr. 358, 359).

These two instruments, Exhibits 2 and 14 constitute my agreement with the union. On Friday, November 26, when I went in to see Rudy Beames I asked Bill Lawson for some men and he said he couldn't give me no men, said I would have to see Rudy, and when I seen Rudy he told me that he didn't know whether my agreement called for that job out there or not, that he'd have to see Mr. Molthan, their attorney, and he said he was going to meet with him over at the Elks Club and have dinner and talk things over and Mr. Lawson went with him and he said that he would send Mr. Lawson back and have him to tell me one way or the other (tr. pp. 359, 360). Lawson said when he came back, he said Mr. Head and Mr. Beames had went out to see [1382] AEC and to look over the prints, so I waited until 5:00 o'clock that evening and Mr. Beames never did show up and I asked Mr. Lawson if he thought I should wait any longer and he said no, he won't show up now, so I went home (tr. p. 361). On Saturday, the 27th, I went by Mr. Beames' house and saw him and he said he had not seen Mr. Molthan, he was in Seattle and he hadn't got to see him, so I went around and asked the executive board again that day, to all of them, and asked them what they thought about it, so that night I called Mr. Molthan's house and I talked to either his mother or her mother (tr. pp. 361, 362). I called Mr. Molthan at the Roosevelt Hotel in Seattle (tr. p. 362). I called my brother in Texas. He was a welder (tr. p. 362). On Sunday, the 28th, I went to Mr. Beames' house again and asked if he had seen Molthan. I

told him I had to have some men and I had to get this thing straightened up (tr. p. 362). He said he would get with Mr. Molthan as quick as he could, so I went by Molthan's house (tr. pp. 362, 363). On Sunday I picked up my brother in Pendleton (tr. p. 363). That was on the 28th (tr. p. 363). On November the 29th, I saw Mr. Beames at his office. I told Mr. Beames that there was Roy Smith and Blackie Sanford and Al Dillion out there that I would like to have and he said, "Well," he said, "You ain't going to get them all," and I said "Well, if they want to work for me I believe I can get them." "Well," he said, "you ain't going to get them all." He said, "I'll give you one." So I said, "Well, I'll take Al Dillion then." He said "Well, I'll be damned. Taking your own damned brother out there as foreman," see, and I said, "Mr. Beames," I said, "You didn't give me no other choice," I said (tr. pp. 364, 365). So he picked up some papers, threw them down on the desk and said, "Why in the hell don't you go ahead and sue. That is what you want to do," and I said "No, all I [1383] want is some men," so I told him, I says, "Go ahead and give Al a dispatch," and he said, "I wasn't going to get those other men," so he had Dorothy there to write him a dispatch and so I sent him on down there to get cleared in through security (tr. p. 365). I talked to Bill Lawson and Woody Cape both on that same day. Woody Cape, Bill told me, said he couldn't give me no men, Mr. Lawson said he couldn't give me no men, so when I talked to Mr. Cape, why he told me, he said "Dillion," he said,

"If you hadn't asked for those men," he said, "Rudy would probably have given them to you," so he said, "Do you know Bill Meeler" (tr. p. 365). I said, "Yes," and he said "He is a good man," he said, "I'll tell you what I'll do." He said, "I'll give him to you now." That was that evening, on the 29th that he said "Tomorrow I'll give you some more men," so I said "Well, that's fine. I'll be glad to have him." So that was all that day then (tr. p. 366). On the evening of the 29th, Monday, I saw Rudy Beames and he told me that he wanted me to meet with the conference board and the executive board to discuss my case and when I got home they had called my wife and left a note there for me to meet with them on that board to discuss my case. I went down to the hall that evening (tr. p. 368). When we first went in, all of us went in. I went in the office there with them, and they asked me to step outside while they discussed my case (tr. pp. 368, 369). Mr. Head asked me to step out (tr. p. 369). There was Mr. Randolph, Mr. Mokler, Mr. Head, Whitey Carver, Dick Lambert, Blackie Morris, Red Fuqua, Don Edwards and Harry Barrett (tr. p. 369). And Art Kuntz (tr. p. 369). I heard some conversations. They were talking about me. Mr. Head was calling on the phone and he was pretty mad (tr. p. 369). He was just screaming it out. He said, "I'm going to see Dillion don't get no men." I don't know who he was [1384] talking to or anything about it, but me and Mr. Lawson was sitting right there at the door (tr. p. 370). They were in there I would judge at least two hours. I was there

until about midnight myself (tr. p. 370). On Tuesday, November 30, I took my brother out to the job and the other fellow, Meeler, had not cleared through Security yet, and then I came back, and when he got cleared through Security then I taken him out to the job and then I called Beames up (tr. pp. 370, 371). The workers must be cleared through the Security Office because they work in the Hanford Area (tr. p. 371). I called Beames up from the area out there and asked him for some more men. I asked him for some welders and some riggers and he said he didn't have no welders or riggers there. He had some plumbers, and he hung up (tr. p. 371). When I came to town Mr. Bilderback was in (tr. p. 371). He is a representative of the International (tr. p. 372). Mr. Bilderback, Mr. Beames, Mr. Lawson, Mr. Cape and Mr. Head were all in a meeting in Mr. Beames' office. I didn't figure I could get to see them anyway, so I went down and talked to Mr. Hopkins and I called the NLRB in Seattle (tr. p. 372). I talked to Mr. Arndt of the Atomic Energy Commission (tr. p. 372). Mr. Arndt made an appointment for me to see Mr. Thurston (tr. p. 373). Mr. Thurston is over the building trades out at Richland. He is an employee of the Atomic Energy Commission (tr. p. 373). On Wednesday, the 1st of December, I had an appointment with Mr. Thurston out at the AEC Building in his office (tr. p. 374). Mr. Thurston called Mr. Beames while I was there (tr. p. 375). On Wednesday, the first, before I went to Mr. Thurston's office I had taken Al Dillion and Mr. Meler out to the job. Meler quit that day (tr. p.

378). I saw Beames that day, Wednesday the first, well, I didn't see Mr. Beames that day. I saw Bill Lawson and Cape. I almost begged them for [1385] men and they said no, we can't give you no men, you'll have to see Mr. Beames. That was in the union hall (tr. p. 379). I hung around the union hall for awhile (tr. p. 380). I saw Mr. Thurston that night at his house (tr. p. 381). That night I saw Mr. Bilderback at the Pasco Hotel and I asked him for some men (tr. p. 381). On Thursday, December 2, I went in the hall to see if I could get some men and Mr. Beames wasn't in, so I asked Mr. Lawson and Mr. Cape if they would give me some men and they still said I would have to see Mr. Beames. I stayed around there until about 3:00 o'clock. About then Mr. Beames and Mr. Bilderback came in and I followed them right in the office and jumped them for some men. I told them I was going to lose my contract if I didn't get some men, and so Mr. Beames, he was awful shaky, and he had a letter from Mr. Molthan, and he said of this letter, said my contract didn't call for that job and he said if I give you any men Mr. Head is going to fine me $250 (tr. p. 382). On Friday, the 3rd of December, I didn't see anybody in the union at that time for men. I didn't see no use of trying any longer (tr. p. 383). The house that I started to build in 1952, having in mind that I could use it to help me acquire necessary capital for my business,I mortgaged it to obtain capital for my business (tr. pp. 383, 384). I mortgaged the house for $2,500 and I borrowed $1,500 (tr. p. 384). They was loans from friends of

mine (tr. p. 384). They were people in no way connected with this case (tr. p. 384). They were not members of the United Association of Plumbers and Steamfitters, no (tr. p. 384). I had two welders (meaning machines) at my house. I bought one from Red Hodges and paid him $337.50 for it (tr. p. 384). This equipment that I had was at my house at the time the executive board examined my shop at Pasco (tr. p. 385). Mr. Morris of the executive board examined the equipment at my house (tr. p. [1386] 385). I had a welder that I paid $337.50 for, the one that I mentioned. I bought the other welder from Mr. Sloan for $300.00 (tr p. 385). I improved the portable one, the gas-driven one, the one that cost me $337 (tr. p. 385). I put another mag on it and spark plugs and just kind of tuned it up (tr. p. 386). I guess there was around $25 worth of repairs on it (tr. p. 386). I had a winch truck. I traded a building for it. It was 54 feet long. I had paid $250 for the building (tr. p. 386). I had to overhaul that winch truck and put a boom on it and new line and I worked on the motor (tr. p. 386). All told, I would say I had around $700 in the winch truck (tr. p. 387). I also had a pickup. I paid $700 for it. I didn't put any improvements on it, I did put a heater in it. That's all, the heater was worth about $30 (tr. p. 387). I had a cutting torch, that would run about, tips and everything, about $137, that is for gauges and everything (tr. p. 387). I mentioned some pipe dies. I had bought these secondhand from a fella and I think I paid him around 30-some dollars, I don't recall just what it was (tr. p. 388). I had pipe

wrenches and crescent wrenches. I don't know how much I had invested. All miscellaneous tools, I guess I had $300 worth of tools altogether (tr. p. 388). I also mentioned skids, pipe and cable materials. I got those in the area. They went with this building and I had to tear it all out and clean it all up (tr. p. 388). I would say they was worth $500 worth of skids and cable. That is my estimate of the whole thing (tr. p. 389). Skids are 4x6's or 4x4's and you lay it across a ditch (tr. p. 389). It is a long piece of lumber (tr. p. 390). I made no further attempts to complete my contract with Mr. Hopkins after the 3rd of December on Friday (tr. p. 390). After that period of time, after the 3rd of December, I sold all my pipe and everything to Mr. Hopkins (tr. p. 390). For [1387] $1,900 (tr. p. 391.) I didn't sell the torch or the dies, the pipe dies, I didn't sell them. I didn't sell the pickup to him. I sold the truck to him, the pickup was left out. I sold the pickup, the torch and the dies at a later time (tr. p. 391). I sold the dies and tools to Mr. Kezer in Seattle for $150 (tr. p. 391). I still have the torch (tr. p. 392). I sold the pickup for $300 (tr. p. 392). Exhibit 42 is my time book (tr. p. 392).

(Exhibit 42 admitted (tr. p. 393).)

Exhibit 41 is my payroll check to Mr. Dillion, my brother (tr. p. 393).

(Exhibit 41 admitted (tr. p. 393).)

Exhibit 40 is my payroll check to Bill Meler (tr. p. 394).

(Exhibit 40 admitted in evidence (tr. p. 394).)

Exhibit 39 is the slip that was attached to a check that I received from Mr. Hopkins for the equipment I sold to him (tr. p. 394).

(Exhibit 39 admitted in evidence (tr. p. 394).)

Exhibit 36 is a receipt for materials which I purchased. This was for an acetylene gauge. It is dated September 13, 1954 (tr. p. 395).

(Exhibit 36 admitted in evidence (tr. p. 398).)

Exhibit 32 is my payroll where Hopkins paid me.

(Exhibit 32 admitted in evidence (tr. p. 398).)

Exhibit 33 is a receipt I got for supplies that I use in connection with going into business. That was for stationery and cards.

(Exhibit 33 admitted in evidence (tr. pp 398, 399).)

Exhibit 34 is a slip that was attached to one of the checks I got from Mr. Hopkins when he purchased some equipment from me (tr. p. 399). [1388]

(Exhibit 34 admitted in evidence (tr. p. 400).)

Exhibit 35 is a receipt for repair work done on my truck.

(Exhibit 35 rejected (tr. p. 401).)

Exhibit 30 is one of the slips that my employees returned to me (tr. p. 402).

(Exhibit 30 admitted in evidence (tr. p. 403).)

Exhibits 21 and 31 are the same type.

(Exhibits 21 and 31 admitted in evidence (tr. p. 403).)

Exhibit 26 is one of the records that I kept my business on the employees that I had working for me (tr. pp. 403, 404).

(Exhibit 26 admitted in evidence (tr. p. 404).)

Exhibit 28 is a welder qualification slip for Bill Meler (tr. p. 404).

(Exhibit 28 admitted in evidence (tr. p. 404).)

Exhibit 15 is a report form on the vacation plan and health and welfare program of the pipefitting industry, state of Washington.

(Exhibit 15 admitted in evidence (tr. p. 405).)

Exhibit 16 is an excise tax return form which I maintained the short time I was in business (tr. pp. 405, 406).

(Exhibit 16 admitted in evidence (tr. p. 406).)

Exhibit 17 is a certified transcript of my labor payroll.

(Exhibit 17 admitted in evidence (tr. p. 406).)

Exhibit 18 contains my signature and Mr. Hopkins'. That is the contract I had with Mr. Hopkins.

(Exhibit 18 admitted in evidence (tr. p. 407).)

Exhibit 19 is a certificate of insurance. [1389]

(Exhibit 19 admitted in evidence (tr. p. 408).)

Exhibit 20 is a receipt for cash in the sum of $1,500 that I deposited for the bond to go to the Local (tr. p. 409). I got that $1,500 back (tr. p. 409). They charged me $18.75 for writing the bond.

(Plaintiff's Exhibit 20 admitted in evidence (tr. p. 410).)

Exhibit 22 is a receipt of Sherwood and Roberts for an insurance premium. It is one of the receipts I received in setting up business (tr. p. 410).

(Exhibit 22 admitted in evidence (tr. p. 411).)

Exhibit 21 is a receipt for the fee that I paid for the bond.

(Exhibit 21 admitted in evidence (tr. p. 411).)

Exhibit 23 is an application for a certificate of registration directed to the Tax Commission of the state of Washington. It is a record I had in my business (tr. p. 412).

(Exhibit 23 admitted in evidence (tr. p. 413).)

Exhibit 25 is a further statement tying in the bond premium with the bond that I acquired from Sherwood and Roberts. It is one of my records (tr. p. 413).

(Exhibit 25 withdrawn (tr. p. 414).)

Exhibit 27 is a return of premium on insurance that I had previously paid Sherwood and Roberts. It is a record I kept.

(Exhibit 27 admitted in evidence (tr. p. 415).)

I obtained the state of Washington contractor's license (tr. p. 416). I don't know whether I have any record of any receipts for any sums paid for that, I might (tr. p. 416). $8.50 I think is what they cost (tr. p. 417). I obtained the license for the winch

truck. That cost $27, or $27.50 (tr. p. 417). [1390] The license for the pickup was $15 or $16 (tr. p. 418). I paid $243 on insurance and got back $202 (tr. p. 418). And then that's $18.75 premium for the bond. I never did get none of that back (tr. p. 418). I had the $1,500 tied up about two months (tr. p. 418). I was in the process of collecting the equipment, material and supplies that I obtained for some time before I actually got my collective bargaining agreement and my contract with Hopkins (tr. p. 418). I worked hard at acquiring these supplies, materials, etc., from around June (tr. p. 418). I would say I put in around 500 hours, something like that, acquiring equipment, supplies and so forth (tr. p. 419). There might be more on the supplies. I thought we were just talking about the hours negotiating business. Just on the acquisition of materials, supplies and equipment might be a little more than that, I really don't know just offhand, but I guess that would be my best estimate (tr. p. 419). I had to drive elsewhere within my home area to make these contacts (tr. p. 420). I would say I drove around 20,000 miles, no, in just talking about obtaining equipment I would say probably around 3 or 4,000 miles (tr. p. 420). I made business contacts in attempting to establish my business (tr. p. 420) so I could obtain sub-work. I contacted contractors (tr. p. 420). I contacted Nicky Crocker, a representative of the Hoffman Company (tr. p. 420). I contacted Buckner in Pasco, a contractor (tr. p. 421). I contacted the Bureau of Reclamation in Ephrata and also in Kennewick (tr. p. 421). I

made contact with Mr. Arndt several times (tr. p. 422). I went to Goldendale and talked to the city council there (tr. p. 422). I talked to Bumpstead and Wilford out of Seattle. I contacted them here in Richland (tr. p. 422). There's more, but I can't think of the names (tr. p. 422). I contacted Kaiser, who was doing work in the Hanford Area (tr. p. 423). That's Kaiser Engineers. I contacted [1391] Blaine Eller of Kaiser. They had a contract in the Hanford Area at that time (tr. p. 423). I would say I put in at least 150 hours contacting these various people (tr. p. 423). I would estimate that I drove 20,000 miles in all of my business (tr. p. 425). Confining my driving to making these contacts I would say approximately 1,000 miles (tr. p. 425). I would say it would run to 50 hours my time spent in union negotiations just to get the collective bargaining agreement, not the time on the men afterwards (tr. p. 425). I would say my time was worth $5 an hour (tr. p. 427). The traveling I did was in my own car (tr. p. 427). I would imagine the cost of driving my car is ten cents a mile (tr. p. 428). I obtained some payroll checks at the bank and some supplies and materials from the Columbia Basin News including stationery and cards (tr. p. 428). Also made a telephone deposit (tr. p. 428) and paid for power (tr. p. 428). On Exhibit 18 there is a blank on the per cent for overhead and profit. That was never filled in (tr. p. 431). It was supposed to be 25 per cent time and material (tr. p. 431). There is no date on the agreement, Exhibit 18, it was just overlooked (tr. p. 431). It was signed after I got my

agreement with the Local (tr. p. 432). It was signed on the 23rd or 24th or could have been a little later (tr. p. 432). I had an understanding with Mr. Hopkins that there would be no effective contract between the two of us unless I got men from the Local (tr. p. 433). I contemplated going into pipework and fabricating work (tr. pp. 433, 434). That pipe in that work would have been steel pipe (tr. p. 434). In the contacts I have made with various contractors I was able to determine whether or not I would be required in the type of business I contemplated going into, it would be necessary for me to purchase pipe and furnish it in accordance with doing [1392] a job (tr. p. 435). At the time I set up my pipe fabrication and pipe laying and pipe work shop I was going to bid on any pipe fabrication I could get. All the big pipe I would do that on the job site (tr. p. 444). I was figuring on doing fabrication work in my shop, small fabrication in there, or if it was say, 66 inch, and it was in the area, why there would be no use of me doing the fabrication in my shop there, when I would have all that freight to haul it out, so I would do the big pipe in the Area (tr. p. 446). The contract I had with Mr. Hopkins was typical of the type of work I contemplated doing (tr. p. 446). The term "pipe fabrication" means that sometimes you use miters, sometimes you use ells, see, and big pipe like 66-inch, there is no ells for the, you have to make miter cuts, see, in order to make a 90. Fabrication is making a joint or bend in a pipe or flanges. Making a bend is one of the things you do when you

fabricate (tr. p. 446). You might enlarge the pipe or make it smaller or put on a flange or something of that kind (tr. p. 447). There is lots of kinds of fabrication, maybe one hundred (tr. p. 447). I had a system that I worked on, take a piece of plyboard of each size pipe and then you get a center line on a top and on the sides and you just set it over the pipes and mark it on each side and then you've already got your pipe quartered. That is fast, and then you have to taper it so it'll fit right down to the pipe and then you can just mark it up the side and roll your pipe right over and mark that. You've got your miter already made (tr. pp. 447, 448). You would make these particular bends or do this particular work on the pipe either in the shop or out where the job is (tr. p. 448). If you did it in the shop it would be shop welding and if you did it on the job it would be field fabrication (tr. p. 448). I don't know of any non-union labor available in the [1393] Tri-City area during 1954 (tr. pp. 448, 499). I don't know if Mr. Head and Mr. Mokler or Mr. Randolph used non-union labor in 1954. I am sure they didn't though (tr. p. 449). Beames showed me a letter from Head at one time (Tr. p. 451). I was pretty mad at the time but I didn't read it all. He just said that he had that letter from Mr. Head and that he was going to fine him $250 (tr. p. 452). I saw that letter in Beames' office. I don't know where the letter is now (tr. p. 452). AEC furnished that pipe out there (meaning at Hanford) but I would furnish all the pipe in my shop (tr. p. 453). On any other job I would furnish outside of

the Area, but AEC sometimes they furnish pipe and sometimes they don't (tr. p. 453). All pipe over 24 inch comes from out of the state (tr. p. 454). It is shipped in, I mean you can buy it here in the state, I think, up to 24 inch but nothing larger in the state (tr. p. 454). There is no steel pipe of the type that I contemplated working on manufactured in the state of Washington (tr. p. 454). Some of the suppliers have a small amount of 24 inch on hand that has been shipped in and you can purchase from suppliers (tr. p. 455). I didn't have a typewriter at this place at the airport (tr. p. 460). I didn't have anybody there to answer the telephone at that time (tr. p. 460). At the time the executive board went out there all I had was desk, telephone and renting one welding machine (tr. p. 460). I had made a deal with Mr. Cooney for this one welding machine (tr. p. 461). I knew the executive board had to okay you before you could get an agreement with the Local. That was pursuant to the Local's constitution (tr. p. 464). I don't know when I first talked to Mr. Hopkins about that contract (tr. p. 469). I gave Hopkins a straight bid to start with, I bid the job myself for $26,251.00. That is what I told Ken, his [1394] superintendent that my bid was, (tr. p. 471). I don't know when I gave that to him (tr. p. 471). This meeting on November 15 was the first meeting that I had presented the executive board with a concrete proposal that they could pass on, yes or no. That is the best I could recall (tr. p. 478). That was a special meeting called at my request (tr. p. 478).

(Exhibit 43 marked for identification (tr. p. 492).)

(Exhibit 43 admitted in evidence (tr. p. 494).)

The contract with the union wasn't signed by me until November 23 (tr. pp. 499, 500). That was Tuesday (tr. p. 500). That's when I told Lawson I would need men in a couple of days, Thursday or Friday, either the 25th or 26th (tr. p. 500). As I went back down to firm up my contract with Hopkins (tr. p. 500). I had to clear with the AEC in order to work on the project (tr. p. 502). I had to show them I had a contract (tr. p. 502). Show them who I was going to work for and what part of the project (tr. p. 502). That is one of the things I had to do after the contract with Hopkins was signed (tr. pp. 503, 504). On the 26th I asked for the dispatch of men. That was a Friday (tr. p. 504). On the 29th, two men were dispatched to me, my brother Alfred and Bill Meler (tr. p. 504). These requirements that were contained there or in the working rules that were given to me by the executive board and the posting of bond, those seemed like regular and reasonable requirements to me (tr. pp. 505, 506). I have been a superintendent and foreman (tr. p. 506). I estimated this bid (tr. p. 506). I was a superintendent for Morrison-Knudson (tr. p. 506). I have been working in the Area, the Hanford Area, off and on since 1948 (tr. p. 510). At one time I approached Mr. Lawson about going into business with me, about a year or a year and half before I went into business [1395] (tr. p. 519). He didn't have any money to go into business (tr. p. 519). He

said it takes some money (tr. p. 519). I don't recall him saying he didn't think I had enough money to go into business. He didn't know how much money I had (tr. p. 519). I could have said when my deposition was taken that it was everybody's opinion that I didn't have enough money. I had to work alone, I had to go it alone (tr. pp. 520, 521). I could have said that Lawson told me that (tr. p. 521). Lawson could have told me I didn't have enough money to go into business. I guess he did (tr. p. 521). I would have done the job in the way Mr. Hopkins directed (tr. p. 537). The method didn't make any difference to me. If he wants to use flanges it makes me more money (tr. p. 537). If Mr. Hopkins wanted me to do it with divers I would have done it that way (tr. p. 538). Thorn and Marble finally did the job, they flanged it up and put it in the river (tr. p. 538). I could have done it just as well as Thorn and Marble (tr. p. 538). I would have done it in the same way (tr. p. 538). I don't know what it cost Thorn and Marble to do the job (tr. p. 538). I was trying to get Mr. Hopkins to do it my way (tr. p. 539). On that job I figured I would clear $6,000 (tr. p. 539). I could put anything in that Mr. Marble could put in and just as neat or maybe a little neater and just as cheaply (tr. p. 540). The pipe that I have bought I bought from Bumstad and Woolford, a Seattle company (tr. p. 540). And the pipe was on the project when I bought it (tr. pp. 540, 541). I never submitted a bid to the Hoffman Company (tr. p. 544). I think he asked me for a bid once but I didn't have an agreement with the Local (tr. p. 544). That was

for a pipeline in Pendleton, Oregon (tr. p. 545). Twin City Construction Company didn't have any work at the time I talked to them (tr. p. 546). [1396]

The Bureau of Reclamation didn't ask me to submit a bid, they didn't have anything going at that time. They told me about a line that was going to come up (tr. p. 546). Hopkins asked me to submit a bid on another job (tr. p. 546). I wasn't asked to bid by Buckman or Kaiser or on the job at Umatilla (tr. p. 547). I didn't submit a bid at Goldendale (tr. p. 548). I didn't submit a bid to Barton at Sunnyside (tr. p. 548). I got a dispatch from the union hall to work for Kaiser Company after this, I think somewheres in January, it could have been December 28th (tr. p. 556). I had worked for Blaw-Knox before I quit in October or November, I worked for them approximately six months (tr. p. 556). I worked for Blaw-Knox twice during 1954 (tr. p. 557). I was welding superintendent for Kaiser for awhile and then I was welder for them later (tr. p. 557). I was getting paid a general foreman's wages at Kaiser. They was figuring on setting up a superintendent. I never did get to be a superintendent (tr. p. 558). Meler said the union pulled him off my job (tr. 565, 566). This pipe that I got from Bumstad and Woolford, Wooten got half the pipe. I sold the pipe and I paid him for his half. At that time I didn't have enough money to pay for the pipe so I had enough to pay for half of it and I told him if he wanted to go in with me on the pipe that he was building a house, too. The pipe cost $300. I put in $150, I got $150 from

Wooten (tr. p. 570). When I later sold the pipe I believe I gave Wooten $250 (tr. p. 571). I put in around 40 hours getting the pipe out (tr. pp. 571, 572). I drove approximately 400 miles, maybe a little more (tr. p. 572). Prior to 1954 I had a pipe fabricating shop of my own in Borger, Texas (tr. p. 573). I was in business there six, seven months (tr. p. 573). And another time I bid jobs in Fort Worth (tr. p. 573). [1397)

Exhibits 48 and 49 purport to be receipts for funds received on a welding machine (tr. p. 576). Exhibit 48 shows the first payment some time around the first of October and exhibit 49 is when I got the balance paid off.

(Exhibits 48 and 49 admitted (tr. pp. 576, 577).)

End of testimony of Dillion (tr. p. 590).

Testimony of Robert E. Randolph (tr. p. 590).

My name is Robert E. Randolph (tr. p. 590). I am one of the defendants in this case. My business is plumbing and heating (tr. p. 591). We work on all sizes of pipe. We are equipped to do all sizes (tr. p. 591). I've been in business in Pasco six years (tr. p. 591). I don't believe there is any steel pipe manufactured in the state of Washington. I haven't purchased any steel pipe that has been manufactured in the state of Washington (tr. p. 592). I have been introduced to Mr. Dillion (tr. p. 593). I met Mr. Dillion at the office of the local union in Pasco (tr. p. 594). That is the first that I knew anything about his shop (tr. p. 594).

I recall attending the meeting that Mr. Head testified to, that is referred to as the joint meeting of the joint conference board and the executive board (tr. p. 594). Dillion acquainted me with the fact that he was in the process of setting up shop (tr. pp. 594, 595). The meeting was November 29th. I learned of it that day (tr. p. 595). Mr. Head called me and suggested calling a meeting. I believe I called Mr. Mokler (tr. p. 595). We always have our meetings at the union hall (tr. p. 597). There is three master plumbers on the joint conference board. I was a member of the joint conference board at that time (tr. p. 597). The joint conference board is made up of three members of management, three members of labor, to discuss problems that come up between management and labor to iron it out (tr. p. 598). [1398] This is an informal organization (tr. p. 599). There is a statewide association (tr. p. 599). I was attending this meeting as a representative of the master plumbers (tr. p. 599). Mr. Head was a member of the group at this time (tr. p. 600). I called Mr. Mokler (tr. p. 600). Mr. Freelow, I could not get him, he was out of town (tr. p. 600). Mokler came to pinch-hit for somebody else (tr. p. 601). I told him the meeting was for a clarification of the agreement between Dillion and the union (tr. p. 601). We hadn't had these meetings very often. I think the last one before this one was during the year of 1953 (tr. p. 607). I have never employed non-union pipefitters or welders (tr. p. 607). I don't recall discussing this meeting with Mr. Lambert after the meeting (tr. p. 607).

Plaintiff's Exhibit 50 marked for identification (tr. p. 613).

That is my signature (tr. p. 613).

(Exhibit 50 admitted (tr. p. 614).)

The type of cases that come before the joint conference board, for example are overtime disputes or travel time disputes (tr. p. 615). I've never been a member of the state joint conference board (tr. p. 616). At this meeting of the joint conference board Mr. Dillion was asked to leave the room (tr. p. 618).

End of testimony of Randolph (tr. p. 619).

Testimony of Lewis Hopkins (tr. p. 620).

My name is Lewis Hopkins, I am a general contractor (tr. p. 620). My place of business is Pasco, Washington (tr. pp. 620, 621). I have been engaged in this business in Pasco about six years (tr. p. 621). I have occasion to bid on jobs involving the laying of pipe. Concrete pipe we lay ourselves, steel pipe normally we sub-contract (tr. p. 621). Subcontractor generally [1399] obtains the pipe (tr. p. 622). There is no steel pipe manufactured in the state of Washington to my knowledge (tr. p. 622). If there is any necessity to fabricate any of this pipe, that is to make bends or closures on the ends of it or anything of that type it is generally done in the field (tr. p. 622). I have done jobs for the Bureau of Reclamation (tr. p. 622). I have never put in any steel pipes (tr. p. 623). I have pur-

chased from manufacturers in my business. I have purchased from Armco in Portland (tr. p. 624). I don't know of any metal pipe manufacturers in the state of Washington (tr. p. 625). I am acquainted with Mr. Dillion. I first became acquainted with him in the fall of 1954. I entered into a contract with him in the fall of 1954 (tr. p. 625). That is my signature on plaintiff's exhibit 18 (tr. p. 625). I had conversations with Mr. Head during the fall of 1954 regarding Mr. Dillion's contract with me (tr. p. 626). I would presume these conversations were in November on the telephone (tr. p. 626). I discussed Dillion's contracted job with Beames or Cape in October (tr. p. 627). Exhibit 52 is correspondence I received from the AEC regarding my contract on the outfall structure that I ultimately contracted with Dillion.

(Exhibit 52 offered in evidence (tr. p. 628).)

(Exhibit 52 withdrawn (tr. p. 629).)

I talked with Beames first (tr. p. 630). I was notified in October of 1954 that we were the low bidder. This was confirmed on November 17 (tr. p. 630). The first conversation I had with Mr. Beames was an attempt to verify the existence of an agreement between Mr. Dillion and the union. I understood that he had one (tr. p. 630). I don't believe I had any more conversations with Mr. Beames (tr. p. 630). I don't believe I had any conversation with Mr. Cape (tr. p. 631). [1400] Prior to the taking of my deposition I had been in conversation with at-

torneys for the defendant and had furnished them with certain of my records (tr. p. 632). Since being subpoenaed for this trial I have been in contact with the attorneys for the defendants (tr. pp. 632, 633). Head gave me a bid on the same project, but the scope and type of work Head would have done are entirely different (tr. p. 635). I received a bid from Mr. Head (tr. p. 637). There was a difference in the scope and manner of work contemplated by Mr. Head's bid and what Mr. Dillion did (tr. p. 637). It was a difference over the matter of method of placing the pipe in this river (tr. p. 637). The end product is the same, the end result is the same (tr. p. 637). Basically, our problem was to place about 500 feet of 66-inch steel pipe in the Columbia River and the conventional method of doing it is to build a big earth dike out into the river, put a drag line, excavating equipment, on the dike, dig a trench and pump the water out and set the pipe and then remove the dike, and that is the way it has been done in previous jobs. (tr. pp. 637, 638).

On one occasion there was an attempt made to float the pipe out into position and then sink it, which was the method that Head felt was advisable. (tr. p. 638).

So we had a different idea on it. We were going to assemble the pipe in 150-foot joints, take it out with a big dredge crane, which had previously dug the trench, place the pipe in the trench and connect the joints by using a diver which we felt would be a less expensive way of accomplishing the job

and as it turned out, it was (tr. pp. 637, 638). Mr. Dillion would have done it the way we actually did do it, sub-assemble the pipe and place it, and Head would have tried to float it, I believe, was his idea (tr. p. 638). [1401] There were no other essential differences (tr. p. 638). I discussed with Mr. Dillion the manner of putting the pipe down the river (tr. p. 638). I believe Head's bid was something like $30,000 (tr. p. 639).

(Plaintiff's Exhibit 53 marked for identification (tr. p. 640).

That is a letter prepared in my office (tr. p. 640). I am sure I gave Dillion notice he was to perform by a certain date. Speed is the most important thing on the job (tr. p. 641).

(Exhibit 53 admitted in evidence (tr. p. 641).)

I gave Dillion verbal notice regarding completion of the job (tr. p. 641). The nature of the notice was that he would have to get more men on the job or we would have to take the job away from him. I gave him that notice probably shortly before that letter (meaning exhibit 53) was written (tr. p. 642). Exhibit 53 was dated December 4, 1954 (tr. p. 643). I paid Dillion for his expenses incurred out there. Exhibit 32 is one of our vouchers. It was for payment in full of work performed on outfall structure and that particular check was to Dillion. I believe that covered his direct wages and expenses in connection with the work he had performed on the subcontract (tr. p. 643). In addition to the written

agreement, we had an additional agreement that we would pay him A.E.D. rental rates on any equipment he furnished on the job (tr. p. 644). Thorn and Marble ultimately did this work for me (tr. p. 644). I had the same arrangement with them to pay them rental rates on any equipment (tr. p. 644). If we had to furnish additional equipment they would pay us and as a matter of fact they did (tr. p. 644). I paid them according to the invoices they furnished us (tr. p. 644, 645). I believe we rented them while on the job a crane and various [1402] smaller items. I doubt if our records show that, but I don't know (tr. p. 645). We would pay them rental on our welding machines (tr. p. 645). This contract of Mr. Dillion's covered work of welding of steel pipe primarily. It did not cover the placing of the pipe (tr. p. 646). Mr. Dillion unloaded a car of steel, either unloaded it off the car or loaded onto our truck, I don't know for sure (tr. p. 646). He furnished them men that handled that (tr. p. 646). His contract covered not only the welding, it also covered the handling of the pipes from the track down on the job. Anything under the scope of work that was normally done by mechanical contractor (tr. p. 647). Thorn and Marble did that (tr. p. 647). Thorn and Marble placed pipe in line on the job (tr. p. 647). They took pipe from a place where it was by the railroad, they furnished the riggers, men that handled the crane rigging with pipefitters on the payroll of Thorn and Marble (tr. p. 647, 648). Exhibit 54 is the file that I kept in my business and

had correspondence with Thorn and Marble (tr. pp. 648, 649).

(Exhibit 54 admitted in evidence (tr. p. 649).)

I informed the AEC that I had a contract with Mr. Dillion (tr. p. 649). I don't know when that was (tr. p. 650). Exhibit 55 is a construction status chart that I prepared on the job that we have been discussing here. It was prepared on November 16, 1954 (tr. p. 650).

(Exhibit 55 admitted in evidence (tr. p. 651).)

In my construction status chart, there is an item designated as assembled welded pipe with an estimated cost figure. Mr. Dillion was to do this (tr. pp. 651, 652). There is also an item, number 7, place welded steel pipe. Under our dealings with Mr. Dillion we were to do that (tr. p. 652). I had discussed with Mr. Dillion the matter of means of [1403] placing the pipe. As general contractors, we dictate how the job is done. Mechanical and the other sub-contractors do it the way they are told to do it under normal conditions (tr. p. 653). The AEC let the bids to put this pipe in the river and all they were interested in was that it was put in according to their specifications (tr. p. 653). They didn't specify the method at all (tr. p. 654). The AEC granted us permission to use welded steel flanges at 150-foot intervals which was not on the original contract drawings. However, it doesn't represent a radical change because it is simply a difference in the method of accomplishing the same purpose (tr. p. 654). They had a meeting with me to discuss the change (tr. p. 655).

(Plaintiff's Exhibit No. 56 marked for identification and withdrawn (tr. p. 655).)

I don't believe there had been any approval by the AEC to the job out there using flanges rather than the other method of putting the pipe out (tr. p. 656). I think the total amount I paid to Thorn and Marble was around $13,700—559, although I couldn't be sure (tr. p. 657). My independent recollection of the total amount which I paid corresponds with the total figures shown on exhibit 54 (tr. p. 657). Mr. Dillion never submitted a lump sum bid that I recall (tr. p. 657). The pipe I referred to that I purchased from Arco Company in Portland was corrugated culvert pipe primarily (tr. p. 657). It is not steel pipe in the trade name, it is made of steel but it is ditch pipe (tr. p. 657). Laborers install corrugated culvert pipe as distinguished from plumbers and steamfitters (tr. p. 657, 658). Mr. Head had planned to do all the pipe moving and handling himself (tr. p. 658). He planned to do some work and furnish some equipment which I eventually performed myself (tr. pp. 658, 659). [1404] There was some risk from the contractor's point of view in adopting the method which I devised to place this pipe (tr. p. 659), that is risk from the cost point of view (tr. p. 659). Insofar as installing similar projects on the Hanford Area, my method was a new method (tr. p. 659). It turned out to be cheaper than the conventional method (tr. p. 660). My method required more speed in getting the work done because we were

dependent on low water in the river. We couldn't wait for the spring floods (tr. p. 660). When Thorn and Marble took over the job they did do the same work in the same way as I contemplated it was to be done by Mr. Dillion (tr. p. 660). They didn't do substantially any additional work or any less work (tr. p. 660). I don't recall begging Dillion to take any work (tr. p. 660). I had some discussions with him about some other job. I think we discussed gas lines. I didn't eventually do any of that work myself (tr. p. 660). At the time I employed Thorn and Marble they had other mechanical work on the Hanford Project and had other work for me at that time (tr. p. 661). I think they had two jobs (tr. p. 661). The fact that they had other work and the fact that I knew they might use some of the welders employed on this other work had something to do with selecting Thorn and Marble to complete that job (tr. p. 661). I contemplated that if there were a shortage of welders Thorn and Marble might take some from one job and put them over to this job, that I was in a hurry to finish (tr. p. 651). My recollection of the overhead and profit figure which we agreed to be inserted in the blank space on exhibit 18 was 15 per cent (tr. p. 662). This letter, plaintiff's exhibit 53, I believe was returned unopened (tr. pp. 662, 663). Sometimes the practice for us to lump the overhead and profit together and simply provide that the mechanical subcontractor will receive the cost plus the figure which covers [1405] both overhead and profit (tr. p. 664). In those situations the overhead portion of the

figure is intended to cover his office nonproductive help, depreciation, repairs, maintenance on equipment and so forth (tr. p. 665).

(End of testimony of Hopkins (tr. p. 667).)

(Testimony of Marion Morris (tr. p. 667).)

My name is Marion Morris, I am commonly referred to as Blackie (tr. p. 667.) In 1954, I was a member of the executive board of Local 598 (tr. p. 668). I know Mr. Dillion (tr. p. 668). I first met him in 1949. I got pretty well acquainted with him in 1953 and he was a neighbor of mine in 1953 and 1954 (tr. p. 669). He moved in about a block from me in 1953 and he lived there up until the middle of, possibly the first part of the year, 1954 (tr. p. 669). We were good friends (tr. p. 669). In April of 1954 was the first time I had any inkling he was going to start in the pipe business (tr. p. 670). Dillion appeared before the executive board several times in 1954. The first time was some time during the summer, I believe it was along in July (tr. p. 670). At that first time Dillion appeared at the executive board meeting in July of '54, it didn't amount to too much, he just came in and wanted to know what the specifications were for him to start in business. We gave him a copy of the Washington State Agreement and told him what it would have to be as far as we were concerned (tr. p. 671). At that time he indicated he wanted to go in the pipe business (tr. p. 671). I believe he next appeared before the executive board in November some time (tr. p. 672). On

September 7, 1954, referring to the minutes of the executive board meeting, I would say that was the first time he came to tell us where he thought he wanted to put a shop. As near as my recollection recalls, it was Enterprise. Enterprise is now called West Richland (tr. p. 673.) [1406] The meeting of November 15 was a special meeting (tr. p. 676.) At that time Dillion had given up on putting in a shop at Enterprise or at the Y because it wasn't suitable and he had went out and found another shop out at the airport and we, the exeuctive board, went out and examined the shop, but I can't get the dates right. I don't know whether it was this night or some other night, but I know it wasn't a regular meeting night and I think it was on a Monday (tr. p. 676.) On the 15th of November, I believe was the night he came in and we told him he would have to have a $1,500 labor bond. He handed us $1,500 cash and laid it on the table. We wouldn't accept it. We. wouldn't be responsible for $1,500, we told him it would have to be a bond. I believe there had been some discussion of a bond before this (tr. p. 677). We wanted a labor bond put up there and let him run, or he could run a certain length of time. To see that that payroll was met. That was the idea of the labor bond (tr. p. 680.) I am still a member of Local 598 and have continuously been a member since (tr. p. 681.) Local 598 is an unincorporated association and a defendant in this action (tr. p. 682), and I am a member (tr. p. 682). On the 16th of November, I remember, we left a notice on the desk for the business—I don't know whether it was this meet-

ing or not that we left a notice on the business manager's desk to investigate Dillion and decide whether he was eligible for a Washington State Agreement (tr. pp. 682, 683). Lawson appeared at this meeting. I think Mr. Beames was out at that time, was away from town, and Mr. Lawson was conducting the business. I think this was the night Dillion brought him up there to the meeting (tr. p. 683).

Plaintiff's Exhibit 57, the minutes of the meetings of the executive board on September 7, November 15, November 16, November 22, marked for identification and admitted in evidence (tr. p. 686). [1407] I remember Dillion coming back on the night of the 16th of November, and giving us a list of what he had and the site of his shop and said he could get more backing, I remember that (tr. p. 689). He had something that proved that he had a lease on that building. I can't tell you right now just what it was, whether it was the lease or a receipt, but it was satisfactory to the executive board (tr. p. 689). According to the minutes also, he was instructed to bring back a $1,500 labor bond. He brought back a labor bond but I didn't examine it (tr. p. 689). I saw Dillion's equipment but I couldn't tell you, I believe it was the 15th, we went out and checked his shop (tr. p. 698.) I checked his equipment but I can't tell you the date (tr. p. 690, 691). I was aware of the equipment he had at home. He wanted me to come over and check it because I was the closest member of the executive board that lived to him (tr. p. 691). The equipment that he had at home—he had two welding machines, he had a truck

and a winch for it, and he had a welding bench, steel welding bench, with two vises on it and he had hand tools. I couldn't tell you exactly how many he had, but I know he had hand tools. He had a lot of torches, several gages, I would say quite a bit of hose. He had a lot of pipe. That is not equipment, but he had a lot of pipe (tr. p. 691). I don't remember whether he had skids or not (tr. p. 692.) I think November 29 was the special meeting of the executive board and joint conference board together. There were no minutes kept of this meeting that I can recollect (tr. p. 694.) I was in attendance. The others in attendance were the members of the executive board, Mr. Head and Mr. Mokler and Mr. Randolph (tr. p. 694). Mr. Barrett, Mr. Kuntz, Mr. Carver (tr. pp. 694, 695). Dillion was there (tr. p. 695). He came in the meeting (tr. p. 695) when it started. He was asked [1408] to leave (tr. p. 695). Mr. Head requested him to leave (tr. p. 696). Mr. Head started in on the executive board. He said why did you guys give this guy a Washington State Agreement, that's the way it opened (tr. p. 696). We told him we didn't give no agreement but we recommended he should have an agreement and it was concurred in by the body (tr. p. 696). Head said something about Dillion getting men. He said he didn't get the job. He said it was bid under me. He said "I don't want the damn job," and he said "I'll go to hell before Dillion mans that job." I don't recall Mr. Mokler or Mr. Randolph saying anything (tr. p. 697). Head did most of the talking (tr. p. 697).

(End of testimony of Mr. Morris.)

(Testimony of J. L. Mokler (tr. p. 709).)

My name is J. L. Mokler. I recall a meeting between the masters and the executive board of Local 598 which is purported to have taken place on the 29th day of November (tr. p. 709). Mr. Randolph, Mr. Head and the only one I knew on labor was Whitey Carver and myself (tr. pp. 709, 710). There was probably eight or ten more in attendance (tr. p. 710.) I don't know Mr. Fuqua. I don't know Mr. Lambert. Mr. Dillion was there. He did not stay during the meeting. He was asked to leave. I don't know who asked him to leave (tr. p. 710). Mr. Randolph called me in the afternoon and said there was a meeting to be held that evening (tr. p. 710.) Mr. Randolph said there was some kind of an agreement, either signed or going to be signed, some kind of a special agreement that Mr. Dillion was going to get, and he thought we should examine the agreement to see whether it was detrimental to us or whether it was a straight agreement or what it was (tr. p. 711.) There seems to be a lot of discrepancy about who was in charge of the [1409] meeting. Mr. Randolph was acting chairman of the board. I had resigned from the board, and in fact, I had been acting chairman. They asked me to be acting chairman that evening and I did, I acted as chairman (tr. p. 711). I'm talking about the joint conference board. This was a meeting between the joint conference board and the executive board of Local 598 (tr. p. 712). I had resigned from the joint conference in the latter part of 1953 (tr. p. 712). When I said I acted as chair-

man, I meant I was acting as chairman of our group (tr. p. 712). They asked me to fill in for the board because they couldn't find anyone else in town to come over (tr. p. 713). Mr. Randolph asked me (tr. p. 713). There isn't any record made of who the members of the joint conference board are. There were no minutes kept of this meeting. My place of business is in Kennewick, Washington (tr. p. 715). I don't do any pipeline work. We operate fabrication only for our own use (tr. p. 716). We went over to the meeting to find out what the agreement with Mr. Dillion was and someone asked to have the agreement brought in and read. Who read it I don't remember (tr. pp. 716, 717). Someone on labor read it. I don't think it was in our group that read (tr. p. 717). We mulled it over and decided that there was nothing in it that would be detrimental to our work and there was nothing in there to give them any better labor conditions than we had in the regular agreement (tr. p. 717). I think I said after the meeting and after reading the agreement we didn't see why we had any business over there at all (tr. p. 717). I don't remember anything said by Mr. Randolph or Mr. Head during or after the meeting (tr. pp. 717, 718). If there was any dispute it was between Mr. Dillion and the union (tr. pp. 720, 721).

(End of testimony of J. L. Mokler (tr. p. 721).) [1410]

(Testimony of Will Lawson (tr. p. 734).)

My name is W. I. Lawson (tr. p. 734). I am assistant business agent of Local 598. I have held this position a little over four years (tr. p. 735). Prior to that I worked for Atkinson-Jones and Urban Smythe out in the Atomic Energy Commission Area (tr. p. 735). They are large mechanical contractors (tr. p. 735). I was not elected assistant business agent, I was hired. Mr. Beames hired me. I was approved by the executive board and also the body (tr. p. 736). The other representative is Woodrow Cape (tr. p. 736). Both Mr. Cape and myself are defendants in this action (tr. p. 737). Cape was appointed approximately a year after I was (tr. p. 737). I wasn't an elected officer of the local during 1954 but the local did approve my appointment (tr. p. 737). I first met Mr. Dillion, the plaintiff in this action about 1947 (tr. p. 737). During 1954 I had discussions with Mr. Dillion concerning Mr. Dillion's desire to go into the pipe fabricating business. I couldn't give you a date on that because it was, I'll say over a period of a year off and on. It came up just in some conversation or something like that. These discussions took place at the house or wherever I run into him (tr. p. 738). The area that I served principally during 1954 was four counties in Eastern Oregon and Walla Walla County in Washington. In Mr. Beames' absence, I also worked around the union hall (tr. p. 739). I didn't have Franklin or Benton County at that time, that was not part of my territory (tr. p. 740). Sometimes I was doing

Mr. Beames' job in Mr. Beames' absence during 1954 (tr. p. 740). Some time in November of 1954, Beames was down at Tulsa, Oklahoma, or I don't know what date (tr. p. 740). My job, I just try to find out what jobs are going on, if there are any new ones started whether they are union jobs or whether they are not (tr. pp. 740, 741). [1411] My territory extends as far south as LeGrande (tr. p. 741). There are industrial pipelines running through my territory. The major portion of the industrial piping that is done and has been brought into this area runs through my territory. I have jurisdiction over the pipelines from Ontario, Oregon (tr. p. 741). It has been my experience during the last five years to assign men to jobs on pipelines and plumbing in that general area (tr. p. 741). I tell the girls who to dispatch and they usually write the dispatches out, but on these pipelines that come through, I done most of that dispatching myself (tr. pp. 741, 742). To a certain extent it is the business agent's job to either dispatch or tell the girls who to dispatch (tr. p. 742). Sometimes I have authority to dispatch men out of the Pasco Local office, any time that Mr. Beames was out and asked me to dispatch men to such-and-such a job, I usually did (tr. p. 743). I undoubtedly dispatched men in the month of November, 1954 (tr. p. 743). I have an idea I dispatched men to jobs in the Tri-City area (tr. p. 744). I did not have to get the approval of any member of the executive board to dispatch men (tr. p. 744). I have not at any time gotten approval of the executive board before dispatching men (tr. p. 744). I have never been re-

buked by the executive board as a body for having dispatched certain men to certain jobs (tr. p. 744). I was asked by Mr. Dillion and went down with Mr. Dillion to the executive board meeting at 11:00 o'clock one night. At that meeting I was instructed by the executive board to get a workable agreement from the Washington State agreement that we could give Mr. Dillion to open a pipe fabricating and welding shop (tr. p. 746). The date I can't remember. After looking at the minutes of the meeting I am pretty sure it was November 22 (tr. p. 747). [1412] No, it was the 16th they called me down there because that is the only meeting that I was called to (tr. p. 748). They were fixing to sign him up to a Washington state agreement when Mr. Dillion came out and got me to come down to the meeting with him to help him. The executive board didn't tell me to sign that agreement. Not that one, because he couldn't sign a Washington state agreement (tr. p. 748). They asked me could I prepare and put into force an agreement for Mr. Dillion. I told them no, I would have to get the lawyer to do it (tr. p. 748). The lawyer was out of town (tr. p. 749). The following day Dillion called me and asked me to meet him over there and Mr. Molthan wrote out something in longhand and I believe we took that longhand draft over to Miss Cameron and it was typed up and signed maybe a couple of days later (tr. p. 749). I was out of town in that period when they was writing them up, writing the minutes up, I was out of town that day. After we brought them over and turned them over to them I had to go to LeGrande,

somewhere over there, and when I got back the agreement was wrote up and I signed it. If the agreement shows on its face that it was signed on the 22nd, I would say that was the date I signed it (tr. p. 750). I don't remember the day Mr. Beames came back from Tulsa (tr. p. 750). He could have been back on the 17th, but I don't think so (tr. p. 750). I don't recall whether I was in town on the 18th (tr. p. 750). Mr. Head and Mr. Beames went to lunch together immediately after Mr. Beames returned from Tulsa. It is nothing unusual for them to go to lunch together (tr. p. 751). I was acquainted to a certain extent with the type of records that were kept in Local 598 in 1954 (tr. p. 751). As to available men, we got a card system. It was all on the card system (tr. pp. 751, 752). Those cards are work record cards that is kept on each man (tr. p. 752). [1413] They have cards shows when a man comes in off the job when they check in and tell us (tr. p. 752). There was no special list of available men kept in the office of Local 598 during the fall of 1954 (tr. p. 755). I could go right down the card file there any time I wanted to see who was out of work and who wasn't (tr. p. 755). All I would have to do is pull out the whole list of cards and go right down it. The date is on there when they terminated (tr. p. 755). In November of 1954, there was around 2 or 3,000 active cards (tr. p. 756). If a contractor called in and said I wanted three men I could go to the card file and pull any of them out as long as they had them set up the way they have them set up. We

had them alphabetically formed right down the line and the ones that had been out the longest is usually the ones we put back to work (tr. pp. 756, 757). There are 75 or 100 cards in each little file and all you have to do is flip right through them like going through a book and find some man whose card indicated he was out of work. The dates is on them. There is lots of them that never come in, maybe they're three or four weeks coming telling you they are terminated (tr. p. 757). They come and talk to me, the girls, anybody that is there (tr. p. 757).

(Plaintiff's Exhibit 58 marked for identification (tr. p. 758).)

That is a work card, one that was set up in the office. That is the type of card we were discussing a minute ago (tr. p. 758). This is the card that indicates when the man is assigned to a job and when he comes off of a job (tr. p. 758). Like this, V. Q., voluntary quit, on 8-27-54 (tr. p. 758).

(Plaintiff's Exhibit 58 admitted in evidence (tr. p. 759).)

There were quite a few of these cards in our files [1414] in November, 1954 (tr. p. 759). I believe it exceeded 2,000 (tr. p. 760). It is a history card (tr. p. 760). I would go through the cards for information that are available (tr. pp. 760, 761). I wouldn't necessarily go through all 2,000 (tr. p. 761). We got an out-of-work file. Their cards are put in a special file (tr. p. 761). I think we had pretty near all the men working along about No-

vember 23, 1954 (tr. p. 761). I wasn't too much acquainted with the Kaiser job on the Hanford Project (tr. p. 761). Everybody that I have working over in the state of Oregon has to be Oregon certified (tr. p. 761). Welders and plumbers have to have a license in the state of Oregon to operate, so I don't have too much trouble with them over there because I know who is whose (tr. p. 762). It is just a difference in the laws of the states (tr. p. 762). I don't think I ever visited the Kaiser job but just one time (tr. p. 762). I don't know when and I couldn't tell you even what I went out there for (tr. p. 763). With regard to the number of pipe welders they were hiring in November or December of 1954, I couldn't tell you how many of them there were. They had a slough of them (tr. p. 763). I couldn't tell you whether they were hiring them because I don't know (tr. p. 763). I couldn't say whether it is or is not a fact that Kaiser was laying off black iron welders because any company out there usually holds the welders until the last, for some cause or other (tr. p. 763). I don't know whether Kaiser was laying off welders or not (tr. p. 763). I had opportunity to examine pipe used by contractors with whom we were dealing. I checked the pipe to see if it had a union label on it (tr. p. 764). I never know just where the pipe comes from (tr. p. 765). I was acting business agent of Local 598 in Mr. Beames' absence while he was gone to Tulsa during November of 1954 (tr. p. 765). [1415] I have testified that I attended a meeting of the executive board with Mr. Dillion the 16th of November, if that is the date (tr. p. 766).

Before I went to the executive board I knew Dillion was trying to get a job from Hopkins. I didn't know what kind of a job it was (tr. p. 766). I didn't know it was an outfall structure (tr. pp. 766, 767). Before I went to the executive board on the 16th, Dillion told me he was going to do fabricating pipe and fabricating business (tr. p. 767). He didn't discuss the details of the Hopkins' contract with me (tr. p. 767). Before I became business agent I had worked on the Hanford Project and I had worked on an outfall structure (tr. p. 767). From what I understand, it was similar to the structure that Mr. Dillion was going to build for Mr. Hopkins (tr. p. 768). I discussed my experiences on the outfall structure with Mr. Dillion and most everybody had talked to me about it (tr. p. 768). I could have discussed with Mr. Dillion the manner in which the job should be performed and the problems that I had seen encountered on the previous jobs (tr. p. 768). I stated that the executive board told me on the 16th, to give Mr. Dillion some kind of workable agreement (tr. pp. 768, 769). By workable agreement I understood Mr. Dillion was asking for pipeline and fabricating welding shop (tr. p. 769). I know the type of men it takes to put one of these outfall structures in, I think (tr. pp. 769, 770). I was called from Mr. Molthan's office by Mr. Dillion the day after Dillion had carried me in to the board. That is when I went to Mr. Molthan's office to discuss the agreement with him and I helped Mr. Molthan to work out this workable agreement, Mr. Dillion and myself did (tr. p. 771). I have worked with this type of an out-

fall structure a couple or three years before (tr. p. 771).

(Exhibit 59 marked for identification (tr. p. 781).) [1416]

Exhibit 59 is a national agreement, lists the type of national agreements. It is a booklet published by Headquarters of the International (tr. p. 782).

(Exhibit 59, admitted in evidence (tr. p. 783).)

Hanford Addendum was simply a contract where a few of the contractors and the union officials agreed with the atomic energy commission as to certain labor standards that would be maintained by the pipefitting industry on the Hanford Project (tr. p. 798). When a man went on the Hanford Project he agreed to abide by the Hanford Addendum simply by referring to the Hanford Addendum in his contract with the AEC (tr. p. 798). A sub-contractor like Mr. Dillion wouldn't actually have signed the Hanford Addendum (tr. p. 798). I never did see Mr. Dillion's shop (tr. p. 802). I couldn't say offhand whether there were any welders hanging around the hall for as long as two days in a row in the last 15 days of November, 1954 (tr. p. 804).

(Exhibit 60 marked for identification, tr. p. 809).

This appears to be the card of Roy J. Smith (tr. p. 809).

(Exhibit 60 admitted in evidence (tr. p. 811).)

(End of Lawson testimony (tr. p. 816).)

(Mokler recalled (tr. p. 816).)

It is possible I made objection to any of the statements made by Mr. Head during the meeting of the joint conference board, but I don't remember any (tr. p. 817). I didn't hear Mr. Randolph make any objections (tr. p. 817).

(End of testimony of Mr. Mokler, tr. p. 819).

(Testimony of Richard C. Lambert, tr. p. 819).

My name is Richard C. Lambert (tr. p. 819). I am acquainted with Mr. Dillion (tr. pp. 819, 820). I first met Mr. Dillion about four years ago on the Armand-Jeffries job at [1417] North Richland (tr. p. 820). I knew him during the fall of 1954. He appeared before the board. I was on the executive board and I was a member of the executive board (tr. p. 820). We were casual acquaintances in the fall of '54. I have become better acquainted with him since that time (tr. p. 820). I attended a meeting during the month of November, 1954, when Mr. Head and Mr. Mokler and Mr. Randolph also attended (tr. p. 821) and the representatives of the union joint conference board were in attendance. That meeting took place at the office of Local 598 (tr. p. 821). The thing that stands out in my mind as to what occurred that night is Joe Head rose and wanted to know what the object was of giving Dillion an agreement, such an agreement, and who in the h--l gave him the agreement (tr. p. 822). Mr. Dillion was asked to retire to the other room. He was in the meeting when it first started (tr. p. 822). Mr. Head also said he would see him in h--l before he'd see Dillion do the

job, the particular job. He also wanted to know who gave the agreement and to confirm that he made a telephone call and called the Local attorney and as I recall it, he got a little rough with the attorney and he turned and said, "He may know the legal end of it but he doesn't know what we contractors have to go through" (tr. p. 822). Also on the telephone conversation he asked about the agreement, if he (meaning the attorney) wrote the agreement and said, "What the h--l do you want to do that for?" That is as much as I can remember (tr. p. 823). The job that was identified was the Lew Hopkins job. Head said that Dillion had the job before he received the agreement (tr. p. 823). Joe (Head) threatened to sue the local and sue Lew Hopkins and fine Rudell Beames $250 and brother Carver, a member of the labor side told him well, he had better go through the right channel. Joe said, "That I will do, I will do" (tr. pp. 823, 824). [1418] I told them since there was such a commotion being raised about this contract it certainly was evident that it wasn't satisfactory. The only contract that I would be familiar with would be a Washington state agreement (tr. p. 826). At the close of the meeting, the executive board left a little notation to be left on the desk that we believed the job should be manned, I mean the business agent's desk (tr. p. 826). I don't recall anything further about the meetings outside of Mr. Lawson was called in and we called Mr. Lawson in to verify how the agreement was brought about for Mr. Dillion, and Mr. Lawson had took it upon himself to assure us that

he believed he could give Mr. Dillion a satisfactory agreement. There was a lot of turmoil there, a lot of discussion. The meeting lasted about an hour and a half (tr. p. 827). I was working for Randolph and Taylor at the time and there was a little note on my card when I came in that evening indicating that it was imperative that I be at the union hall at 7:00 o'clock that night. I didn't know the purpose of the meeting before attending (tr. p. 827). I was in attendance at the meeting of the executive board meeting on the 15th of November (tr. p. 829). That is the first time that I was present at a meeting when Mr. Dillion came before the board for an agreement (tr. p. 829). Dillion said he had talked to the business agent about an agreement and that he had a place at West Richland, but that wasn't satisfactory, but he stated that he had a new location in Pasco which was now agreeable, which would be agreeable with the business agent. He wanted the board to agree to give him an agreement (tr. pp. 829, 830). We told him what he would have to do in order to qualify to get the agreement. He would be required to have tools, telephone, a building that is facing a street, and a bond. We discussed with him the purpose of the bond to assure the payroll (tr. p. 830). [1419] On the 15th Mr. Dillion was asked to bring in his bond proof and his financial report (tr. p. 833). I looked at Mr. Dillion's shop. The executive board did. I believe that was on the 16th. We went out and looked over Mr. Dillion's shop at the airport. There were

several welding machines in there. He explained to us that he was renting one of them and all the switchboxes and the pre-fabrication table and tools that he showed us (tr. p. 833). Dillion attended with us at the time we looked his shop over (tr. p. 833). He informed us of other equipment, supplies, tools and materials that he had (tr. p. 833). He said that he had a quantity of pipe and a couple of welding machines and a truck, dies and other tools (tr. p. 834). We referred Dillion to the business agent. We told Dillion that he would have to deal with the business agent and we wanted harmony with him and within the local so we wanted to make sure it was agreeable with the business agent (tr. pp. 834, 835). On the 16th, Mr. Lawson stated that he had no objections to Mr. Dillion having an agreement. He said he was a member of the Local, surely he should know the rules, we shouldn't have any trouble with him. He said, "I believe I can give Dillion a satisfactory agreement" (tr. p. 837). In about April of 1955 I had an occasion to speak with Mr. Randolph, the defendant in this case, at his shop about the meeting of November 29th.

(Exhibit 44 offered in evidence (tr. p. 848).)

(Exhibit 44 admitted in evidence (tr. p. 850).)

All Dillion was talking about with the executive board was pipeline fabrication, that was my understanding (tr. p. 853). On November 22, this matter, everything was satisfactory to the executive board and the agreement should be issued (tr. p. 855).

After the meeting on November 29, nothing was done by the executive board revoking its prior action in the matter (tr. p. 856). [1420] As far as the executive board was concerned, the agreement was still valid and by that time it had been signed (tr. p. 856). The executive board met on November 30 at its regular meeting and did nothing at that meeting to revoke, change or in any way alter or modify the contract Mr. Dillion had with the union (tr. p. 856). After all the hue and cry of the night of November 29, there was not any change in any way, shape or form in the decision of the executive board that I know of (tr. p. 858). I talked to Mr. Vance at the noon recess today and he asked me if I recalled the meeting of November 30 and if Joe had made any threats of suits and I told him yes (tr. p. 863).

(End of testimony of Mr. Lambert (tr. p. 863).)

(Deposition of Mr. William Thorn was published, (tr. p. 870).)

My name is William Thorn. I am a partner in the firm of Thorn and Marble Company. We are mechanical contractors (tr. p. 870). In 1955, I had a contract with Lewis A. Hopkins to do an outfall structure on the Hanford Project (tr. p. 870). I presume we had a written contract, I don't have it with me, I can't remember the terms (tr. p. 871). Our records show the amount that was actually paid to us on this contract. I do not have those records with me (tr. p. 872). We have those records in our office (tr. pp. 872, 873). I do not recall

offhand what the figure was, how much we were paid (tr. p. 873). I think we were paid so much for equipment and so much for materials and so forth (tr. p. 873). The contract of that type is classified as a time and material contract (tr. p. 874). The work that was involved—we did not handle the pipe, it was placed by the general contractor. After the pipe was placed we welded all of the joints up or bolted them except those under the river, which was divers' work and the UA didn't claim it, so we installed the [1421] big pipe up the bank and welded the pieces together that were to be floated down the river, but did not place them in the river. We didn't handle pipe (tr. p. 874). The pipe was 66 inches and I don't remember how many feet long, maybe 600 feet, maybe 1000 (tr. p. 874). I believe the pipe was in 40-foot lengths (tr. p. 875). I think they put three sections together and put them out in the river and sunk them. They had a flange on them and then the diver went down and bolted that section together. Our firm didn't do that. Our firm welded the flange (tr. p. 875). Someone else actually placed them in the river and even placed the pipe on land. We didn't handle any pipe. It was too big for any equipment. There had to be a crane there anyway so the one crane took care of everything (tr. p. 857). I don't recall when we went on the job (tr. p. 876). We weren't on the job very long as far as that goes (tr. p. 876). We welded anchor straps on the pipe so that when they were embedded in concrete there was an anchor flange

there, various things like that (tr. p. 876). I don't remember whether there was a surge chamber on the pipe, I don't remember much about it. There was a structure for the bank of concrete where the pipe ended. I was down on the job prior to that time and I don't remember whether it went in that, and I recall where that surge chamber was placed (tr. pp. 876, 877). I don't recall how many men we used on the job, maybe, I don't know, offhand five to ten. They were journeymen, welders or fitters (tr. p. 877). There might have been a laborer down there or there might have been a truck driver (tr. p. 878). I don't think we had occasion to use riggers. If we had put the pipe in place ourselves I don't think we would have had occasion to use riggers (tr. p. 878). As a rule in our trade the pipefitters claim the rigging. That doesn't always hold true. Sometimes a rigger on the job, they [1422] will hook them on the pipe and if there doesn't happen to be a fitter around they will rig it, maybe. As a rule they will rig their own pipe. I know they didn't rig the pipe in the river because that was done by this big barge. We had nothing to do with that (tr. p. 878). We had no heavy equipment operators on our payroll. Our records would show how many men we used on this job and what their trade and occupation was and what we paid them (tr. p. 879). The only name of a man I can recall on the job was Bussell. The reason I remember that one, I think he would be our superintendent. The way they switched the men around I wouldn't know the men they had down there (tr. p. 879). Generally,

we have been working over there for about the last, at least, three years. In that period of time we would pick up quite a few jobs, little ones as well as big ones, and we might have four or five jobs running at once under separate contracts. This one superintendent will move these men around even from day to day or week to week as the jobs progressed to keep the sleeving ahead or getting out of some other trade's way. There was quite a bit of that going on (tr. p. 880). All of our men came from Local 598 (tr. p. 882). I can't recall whether we had to wait for any men or not (tr. p. 882). We make our requisition for men by phone (tr. p. 882). We are signers of the Washington State Agreement (tr. p. 883). We have been engaged in the business that we are now in, which would involve the fabrication and laying of pipes since about 1949 or '50. Prior to that time we had done smaller work, heating plants which was fabricating pipe and small stuff (tr. p. 885). The pipe that we have laid or fabricated or worked with since 1949 or '50 was manufactured in all of the main mills around the country (tr. p. 885). It is not manufactured in the state of Washington unless it is a special order. I think there is a [1423] little pipe that can be rolled at Seattle, but it is never any bulk amount (tr. p. 886).

(End of testimony of Mr. Thorn (tr. p. 887).)

(Testimony of RuDell Beames (tr. p. 88).)

I am RuDell Beames, the business manager of Local 598 of the Plumbers and Pipefitters. I held

that position during the latter half of 1954. I am elected a business manager and to tell the difference between myself and my assistants, we call them business agents (tr. p. 889). The highest number of members that we had in our local during my tenure of office would run between 2500 and 3000, all at one time, active members of the Local. I don't mean they were all working here. We have a lot of them in our Local whose cards are in here that are scattered all over the United States, they haven't worked here for years, but they do have the cards in this Local (tr. pp. 889, 890). I couldn't tell you the exact number that we had working locally during 1954 (tr. p. 890). There were two large contracts on the Hanford Project during 1954, however, they didn't peak at the same time (tr. p. 890). Quite a few of the men that came off the Kaiser job as they were finishing it went right over to the Blaw-Knox job and finished it because it finished after the Kaiser job quite awhile. The Atomic Energy Commission tried to plan it that way because of the shortage of manpower (tr. p. 890). I heard Mr. Arndt's testimony (tr. p. 890). I can't understand what Mr. Arndt was talking about. I don't think he knew what he was talking about (tr. p. 891). This was in regard to manpower, available manpower (tr. p. 891). I was fitting pipe in the oil fields when I was 14 years old and I have been either a helper or a pipefitter ever since (tr. p. 891). Before I was business agent I was general superintendent for Urban, Smythe and Warren right prior [1424] to the time I came to work for the union (tr. p. 891). I have not done any

engineering, planning, bid preparations or preparation of invitations to bid (tr. p. 892). I don't feel that Mr. Arndt knows what he's talking about manpower and availability of manpower. I am not talking about the manpower it takes to put in a job, I am talking about availability of manpower (tr. p. 892). During the year, 1954, I did not assume the duties of entering into contracts, collective bargaining contracts with contractors in this area (tr. p. 892). I might have signed McMillan's contract, I'm not sure. However, it was after it was okayed by the executive board (tr. p. 892). We don't work for general contractors, only those who have a national agreement and I don't recall ever pulling men off of a job (tr. p. 893). Sometimes there has been wildcat strikes over jurisdiction and the men walked off themselves but we always had to put them back. It is against the law to strike over jurisdiction and we have a grievance procedure we have to go through, we must go through it, so it is foolish to pull men off the job. The union has never pulled a man off the job (tr. pp. 893, 894). I would say that I have never ordered men to quit work on a particular contract during the year 1954, that I recall (tr. p. 894). I'll say that I did not personally (tr. p. 894). I did not instruct anybody else to order them not to work (tr. p. 894). There was interruptions, there was quite a lot of interruptions, there always is on any job (tr. p. 894). In the state of Washington, we are represented by a State Board of Negotiators and Arbitrators and I do sit on that body on labor's side, but to tell you how many times we met, how many times

the state board met offhand I can't tell you. We met in Yakima, in Seattle and in Spokane (tr. p. 895). That resulted in the Hanford Addendum in 1952 or 1953. Our experience with Kaiser engineers and Blaw-Knox both was very unsatisfactory. [1425] I sat down with them probably once a week. It wasn't negotiating, it was just interpreting the agreement, deciding who was right (tr. p. 896). I represented the union in interpreting the agreement (tr. p. 896). I don't believe the members of the executive board were ever there (tr. p. 897). After the various negotiations or a weekly meeting, I would report these negotiations to the body of the union (tr. p. 897). Occasionally the union gave me instructions when the problem had not been reconciled before the meeting but generally they were so minor that it had been taken care of and the union accepted my report or rejected it (tr. p. 897). I don't believe the body ever voted on it except that I would make my report to the executive board and they would say the business manager's report accepted, and then the body, of course, has to accept or reject the minutes of the executive board. All power flows from the body in our organization (tr. p. 898). My powers are laid out in the constitution (tr. p. 898). The body exercises control over my activities during the course of my tenure in office (tr. p. 898). I report to the body every two weeks at regular meetings if I am not out of town (tr. p. 898). I don't know how many times I was before the executive board during the year 1954 (tr. pp. 898, 899). They are supposed to meet every two weeks in regular meetings. It is

very probable that they held special executive board meetings (tr. p. 899). The minutes might show how many times I went before the board (tr. p. 900). I was out of town when negotiations were going on for Mr. Dillion's contract. I had asked Mr. Lawson to take care of it. It was probably 75 per cent or better consummated when I returned. Under the agreement, it is the executive board's business to negotiate a new agreement (tr. p. 900). The constitution says that the executive board will be in charge of the affairs of the Local [1426] between meetings (tr. p. 902). I was not engaged with the controversy with the executive board during the time that Mr. Dillion's contract negotiations were going on. We had disagreed previously (tr. p. 904.) I would not say the relationship between myself and the executive board was harmonious (tr. p. 904). I was elected an official in 1954 (tr. p. 904). I was originally appointed (tr. p. 904). The geographical area over which our local claimed jurisdiction during the year 1954 was roughly six counties in Oregon—we generally take care of about half way to Portland on the Oregon side of the river—as far up the Yakima Valley as the Yakima line to highway No. 10 as it goes into Moses Lake, across through the Columbia Basin and across through to Lind. We do have Lind, and Walla Walla County (tr. p. 904). As far as the contractors who have received contracts from our Local are concerned, there isn't any distinction as to what part of the Local's jurisdictional area they may work in (tr. p. 905). During the years 1955 and '56 I personally did not dispatch men to pipeline

and gasline jobs in Oregon. Mr. Lawson handled the pipelines for me (tr. p. 905). I did dispatching of men in 1955 and 1956 (tr. p. 906). Mine is the original responsibility of dispatching all men from the Local, however, I do have two assistants and I delegate certain areas to those people and tell them to run their jobs and dispatch what men they need and if they get in any trouble and need any help, why come to me with their problems, otherwise it is their job (tr. p. 906). If Mr. Lawson got in trouble over signing of a contract with an individual it is his duty to clear it with the executive board, I have nothing to do with the signing of a contract (tr. p. 906). I have worked out on the Hanford Project and I am aware of what general contractors had UA contracts or United Association contracts with the pipefitters [1427] in 1954 and were working on the Hanford Project (tr. p. 907). Mr. Lewis Hopkins did not have a contract with our local (tr. p. 907). Mr. Hopkins was not entitled to obtain men from our union under a contract (tr. p. 908). Those contractors who had agreements with ourselves or with some other UA Local might be in California or Kalamazoo, were entitled to obtain men from our local (tr. p. 908). If Kaiser engineers and Blaw-Knox had international agreements or Joe Head had a local agreement he was entitled to receive men (tr. p. 908). If a general contractor did not have an agreement with our local and he started putting in pipe we would be very unhappy about it (tr. p. 908). I am generally acquainted with the items of work over which my Local and Interna-

tional claim jurisdiction. We claim jurisdiction over certain portions of laying of pipe, steel pipe. We don't put it in the ditch. We don't string it along the ditch, but we do claim jurisdiction over welding it together or dresser couplings or whatever method is used in connecting it together (tr. pp. 911, 912). We have pipefitter riggers. Their duty is to do the rigging on any equipment that comes under our jurisdiction. Our union would object if a general contractor started handling pipe without a contract with our union (tr. p. 913). In fact, that is what jurisdictional strikes are made of, somebody else handling what we claim to be ours (tr. p. 913). It is happening every day on the Hanford Project, not only between our crafts but every craft (tr. p. 913). There was no jurisdictional trouble that I recall during the course of Thorn and Marble's job involving our people, where our people walked off the job (tr. p. 913). I'm sure I dispatched two men to Mr. Dillion's job at one time (tr. p. 914). It was my conclusion that Mr. Dillion had a contract with our Local (tr. p. 915). [1428]

Prior to the 15th of November, I was not aware of any efforts on the part of Mr. Dillion to set up a fabrication shop (tr. p. 917). In my deposition I said I don't know, in answer to the question whether discussions concerning this pipe fabrication shop and pipe fabricating deal were under way during the months of October and November, 1954 (tr. p. 918). There were others in the Tri-City area interested in setting up a pipe fabricating shop and I

did discuss with them (tr. p. 919). I don't remember the dates. I understood that attorney Molthan was the attorney for a group of Kennewick people who were thinking of setting up a fabricating shop, but that particular deal never got far enough along for them to ever talk to me about an agreement or anything; however, I did hear about it (tr. p. 920). I don't know what interest Attorney Molthan had, if he had any (tr. p. 920). I didn't know whether or not Mr. Mokler, Mr. Head and Mr. Randolph were members of the joint conference board in 1954 (tr. pp. 920, 921). It was not my responsibility to work with the joint conference board. It is my responsibility to deal with the employers but not on the joint conference board. Our records would not show whether Mr. Mokler, Mr. Head and Mr. Randolph actually were members of the joint conference board (tr. p. 921). Mr. Randolph did not contact me as a member of the joint conference board at any time during the month of November, 1954, and ask me for a meeting of this board (tr. p. 921). Exhibit 50 probably came into my office but I wasn't there and the girls probably filed it. I never saw it (tr. p. 921). I wasn't even aware that the joint board was meeting as such (tr. p. 922). The only conversation I think I had with any of the masters was probably over the phone with Mr. Head. I told him if he wasn't satisfied with Mr. Dillion's contract to take it before the Local conference board. I don't know what date that was (tr. p. 922). [1429] When I said in my deposition that the Local conference board was not operating and that we had no

problems, I meant that they weren't active. We hadn't had a meeting of the Local conference board for—well, I can only remember one meeting that we had in probably two years (tr. p. 924). The master plumbers have a right to change their membership in the Local conference board any time they want and don't necessarily notify us (tr. p. 924). I stated in my deposition that I didn't believe there was a meeting of the Local conference board as such on November 29. I didn't believe there was. I thought they met with the executive board. However, I have found out since that there was a meeting of the Local conference board, but I wasn't there, and there was nothing in any of the minutes that I received of the executive board minutes to indicate that they had met with them and I didn't know what took place (tr. p. 925). Throughout 1954 the Local paid $250 a month rent to Mr. Head (tr. p. 926). We have been looking for another location but have not found one yet (tr. p. 926). As I just said, I told Head that if he had any objections to Mr. Dillion's contract he could call the Local conference board meeting (tr. p. 926). I said in my deposition that I discussed it with Mr. Dillion and I assured him at that time that it was a problem of his and the executive board concerning a contract, and under our working rules the executive board must approve all agreements. I told Mr. Dillion he should see the executive board (tr. p. 927). But I told Joe Head that if he wasn't satisfied he would have to see the Local conference board (tr. p. 927).

I couldn't tell you the date when I had these conversations with Mr. Head about Dillion's contract (tr. p. 928). In my deposition in answer to the question as to whether I had had any conversation with Mr. Head between the dates of November 15, 1954, and November 22, 1954, [1430] concerning the Dillion contract, I said that I believed he said that as far as the Washington State Agreement was concerned that Dillion, if he had an agreement, wasn't living up to the rules of the Washington State Agreement, which sets up certain standards that must be met by any contractor before they go into business (tr. p. 929). That's what I said in the deposition. That's right, but we didn't discuss what was in Dillion's contract (tr. p. 929). This does not refresh my memory as to whether it was before the 22nd of November. I don't remember when it was (tr. p. 929). I talked to Mr. Mokler, it was either in front of his shop or in his shop. I think he brought it up about the meeting that was held, the local conference board meeting and he stated at that time that it was none of the master's business who we signed a contract with. He said the meeting was a phony or something like that. He meant unnecessary. He gave me that impression, that he didn't consider it any of the boss' business who we sign a contract with (tr. pp. 929, 930). This was after they had held the meeting and I believe within just a few days after the meeting. After Thorn and Marble took over the Hopkins contract, I believe Central Plumbing and Heating Co. finished the job in the area, maybe a week after that, and we had a few men and we dis-

patched some of them to Thorn and Marble (tr. p. 931). I do not know what day the Hopkins contract was cancelled on Mr. Dillion (tr. p. 931). I don't know when we first dispatched men to Thorn and Marble (tr. pp. 931, 932). It is possible our records reflect this (tr. p. 932). I don't believe it is a fact that one of the men was on the Blaw-Knox job three days and was pulled off and put immediately on the Thorn and Marble contract. I never pulled a man off a job. If he wants to quit he can quit. We will do the best we can to put him to work (tr. p. 932). I know Matt Torgeson, a welder (tr. p. 932). [1431] I do not know Paul W. Wood, a welder. I don't know whether Paul W. Wood came off a contract other than this contract and went to work on the 7th, three days after the Dillion contract. The Thorn and Marble job that was taken over from Mr. Dillion was not necessarily to be done entirely with welders. Welders could do the whole job but they could use other than welders on it (tr. p. 943). Steamfitters were in fact used (tr. p. 944). There might have been a plumber, too, sent out there (tr. p. 944). There might have been a few plumbers and steamfitters and riggers unemployed during the time that Mr. Dillion was seeking men for his job, but there was none seeking work, otherwise he would have gotten them (tr. p. 944).

(Further testimony concerning availability of men omitted as not material to the appeal). Plaintiff's Exhibits 61, 62, and 63 are the record of dispatches of men from Local 598 during the periods

indicated on the face of these exhibits (tr. p. 971). Exhibits 65 through 73 are work history cards of members of the Local (tr. p. 972). There was no plumbing on the Thorn and Marble job that I know of (tr. p. 994). The only discussion I had with Bilderback was that he told me Dillion had been to see him at the hotel or something (tr. p. 997). I don't remember discussing the matter with Mr. Thurston during the latter part of November or the month of December, 1954. It might have been mentioned in one of our telephone conversations (tr. p. 997). I told Lawson that Mr. Dillion needed men and asked him if he had any on the hook any place down around Oregon or Walla Walla which we could pull in (tr. p. 997). I first became business agent of Local 598 in the latter part of July, 1952, by appointment (tr. 1003). Prior to that time I was general superintendent for Urban, Smythe and Warren (tr. p. 1003). Prior to being appointed business agent I had been on the [1432] executive board and examining board and I was vice president (tr. p. 1003). Those jobs were not salaried jobs. In the fall of '52 I ran for office and was elected (tr. 1004). I ran in '55 and was elected. My job as business agent is a salaried job (tr. p. 1005). I have been on the State Board of Negotiators and Arbitrators since 1953. That is the board that negotiates the statewide Washington State Agreement (tr. p. 1005). There are six representatives of labor and six representatives of management (tr. p. 1006). Blaw-Knox has an unlimited national agreement (tr. p. 1006). A national agreement holder that has an un-

limited agreement can do any type of work, but when he comes into a territory he has to pay the same wage scales and operate under the same conditions as far as fringe benefits, travel time is concerned as any local contractor. However, they are under the direct supervision of the International. The International is the business agent for the national contractors. If there is any grievance that amounts to anything we immediately get the organizer in because they do have a form of agreement and they are responsible to the international and not the local union (tr. p. 1006). An employer with a national contract having a grievance would not go through the State Board of Arbitrators and Negotiators. That would be taken up with the International union and the employer (tr. p. 1007). Clayton Bilderback represents the International union when necessary on such matters as that (tr. p. 1007). Kaiser had an unlimited national agreement. Those doing mechanical contract work on the Hanford Project in 1954—I probably can't remember all of them, were Hovenwell, Johnson-Kroll Company, Blaw-Knox, Kaiser Company, Thorn and Marble, Avery Company, Bumstad and Woolford, I believe University had a tank farm, a contract to install underground tanks, J. P. Head, Central Plumbing and Heating. Offhand, I can't remember [1433] any more, there might have been more (tr. p. 1008). Mr. Mokler or Mr. Randolph I don't believe did business on the Project (tr. p. 1008). Mr. Dillion requested welders from me (tr. p. 1009). There would be no work for fitters unless there was welders. Any-

fitters that would be on the job after that would just there to assist the welders (tr. p. 1010). On processed piping the type that is in the area, I would say 90 per cent of the work is welding. There is a few screwed pipelines but 90 per cent of it is welded. The fitters do work along with the welders, brush welds, carry their leads around for them, help put the pipe in position to weld together, but if they don't have welders there just isn't any job. They can't use the fitters without the welders (tr. pp. 1010, 1011).

(Another omission of cross-examination regarding the availability of men omitted as not relevant to the appeal.)

The primary purpose of the so-called history card is a financial record to keep track of the payment of the members' dues (tr. pp. 1022, 1023). If a man comes into the office and says that he is out of a job and wants a job his history card is put in the out-of-work file (tr. p. 1023). They are classified by trade into plumbers, fitters and welders (tr. p. 1023). The metal tradesmen who work for General Electric are in a separate file (tr. p. 1023). Those men whose cards are in the out-of-work file are not always available for work (tr. p. 1024). We have around 300 men in the Local now that are scattered all over the United States, just pay dues in there. Our dues was only $3.50 a month at that time and they just leave their cards in our Local, work all over the country. We have almost 300 of them scattered around throughout the United States and the

Orient, Alaska and Canada now. I don't know where they are, they send their dues in wherever they are working [1434] but they are classed in the out-of-work file (tr. p. 1024, 1025). If we have requests for men from various contractors and are unable to fill them we try to pro-rate them (tr. p. 1025). Out in the area many times the Atomic Energy Commission has requested me to give some additional men to a certain contract that is falling behind, do everything I can to help that particular party out because they are going to need that contract a little sooner than they anticipated, or they think that it isn't up to schedule or something like that (tr. p. 1026). During this time in question, November, 1954, I would have such conversations with Mr. Henry Thurston at the Atomic Energy Commission. Sometimes I talked to him two or three times a week and then other times I don't hear from him for a couple of weeks (tr. p. 1026). I don't have one contractor that doesn't complain. Every one of them thinks everybody else is getting better treatment than they are, being sent the best mechanics, get men sooner than they do. If I could ever satisfy one of them just one week I would make a mark on the wall (tr. p. 1028). This so-called "yakking" of Mr. Head did not have any effect upon my dispatching of men (tr. p. 1028). Normally Mr. Head would take any conflict between us and the masters with regard to Mr. Dillion's contract before the local conference board. If he wasn't satisfied with their decision within, I think it is 48 hours, he has a right to appeal it to the State Board

of Negotiators and Arbitrators (tr. p. 1029). He evidently took it up with the local conference board. There was no minutes and I wasn't there (tr. p. 1029). I have never taken any of the contractors before the local conference board (tr. p. 1030). There was no argument between Dillion and myself (tr. p. 1030). The conference board has a right to fine either party and the fine goes into a charity fund. It could go as high as $250. Mr. Head did not discuss with me the matter of [1435] a fine that might be levied against me as a result of the Dillion case (tr. p. 1031). Mr. Dillion was a member of our local (tr. pp. 1032, 1033). Mr. Thurston was never a member of our local (tr. p. 1033). Our local does not have a direct working relationship for the Atomic Energy Commission, but the Atomic Energy Commission establishes precedent out there for almost all labor relations working conditions and we are constantly in touch with them (tr. p. 1033). We had a contract with the Washington State Association—of the employers in the pipefitting industry, a labor management agreement, and Mr. Dillion had a contract under that general agreement (tr. p. 1033). There has been occasions when I give special consideration of emergency work and Atomic Energy work. If the Atomic Energy Commission has two cost-plus-fixed-fee jobs going out there, they are responsible for the payroll and if one contractor had a call in for seven welders and they had a quick change-over job, maybe, for instance, like Urban would have on maintenance and repair, something that would have to be done, and they would ask me

to shove Urban a few extra men, why I would certainly take it into consideration. They are supposed to know which one, which job, is the most critical and it is the taxpayer's money (tr. pp. 1033, 1034). During the last half of November, we were furnishing men from our local to many contractors other than Blaw-Knox and Kaiser (tr. p. 1035). We were not to my knowledge giving special consideration to any of those contractors other than Blaw-Knox and Kaiser (tr. p. 1035). We do not have any way of establishing in writing from our records what employers called for how many men on what day (tr. pp. 1039, 1040). Kaiser Engineers Division put requisitions in writing (tr. p. 1040). Most of Mr. Randolph's and Mr. Mokler's work is just conventional plumbing and heating, what we call uptown work. I can't remember of either one of them ever having [1436] any pipeline. They do their own fabricating for heating plants. Every job has a certain amount of fabricating (tr. p. 1047). If they had a schoolhouse with a couple of boilers in it they would have to have the steam head running across the top and 90 per cent of the time it would be probably ten-twelve inches and be welded. That would certainly be pipe fabrication as far as I am concerned (tr. p. 1048). I don't think either Mr. Mokler or Mr. Randolph ever called for a rigger. They use a welder once in awhile (tr. p. 1048). I would say 90 per cent of the work on the project is done by contractors from outside the Tri-City area (tr. p. 1049). I don't know who the largest contractors in the Tri-City area are. I believe Mokler has got about

one or two men working for him, I don't know who has got the most money (tr. p. 1049).

(W. C. Dillion recalled.)

I worked for Mr. Mokler in August of 1954 for approximately four or five weeks (tr. p. 1065).

(Testimony of Jack Cooney (tr. p. 1111).)

My name is Jack Cooney. I am a school instructor. I am director of the Columbia Basin College at Pasco. There is a welding school in that college (tr. p. 1111). I have worked for the Pasco School District since 1946. Prior to that I was with the Richland School District. In the fall of 1954, the college had a lease on building 118. I had a contract with Mr. Dillion (tr. p. 1112). We were moving out of building 118. We planned to move about the first of December and move into a large hangar building and establish our welding classes there. He said he was going to take over the building. We had 13 welding machines in the building at that time. I couldn't make any arrangements to lease or rent any of those machines to Mr. Dillion for the simple reason the machines belonged to the school district. I had [1437] no authority to do so. I made no such deal (tr. p. 1113). Mr. Cotton is manager of the Pasco Airport. I don't know who tagged the machine with Mr. Dillion's name in the fall of 1954, about the 15th of November, 1954 (tr. p. 1114). I had a discussion with Mr. Dillion regarding our possession and his possession about the middle of November (tr. p. 1114). He wanted to know, he said

inasmuch as he was going to take over the building he wanted to know what we were going to leave in the way of electrical gear and so forth and I said that we would take the gear that we had placed in that building. That building was formerly a blacksmith shop and had a small, oh I think it was about 400 amp switch built into it (tr. p. 1220). This conversation took place in my office at the air base. I never was in the shop with Mr. Dillion over there. I don't believe I discussed with Mr. Dillion the number of machines that were there. I might have discussed with Mr. Dillion the condition of the machines inasmuch as we needed approximately ten more machines when we moved into the other shop at that time (tr. p. 1115). We were using all of the machines in that shop. I believe they were all in working order unless they were temporarily down for repairs (tr. p. 1116). I never saw one of these machines tagged with Mr. Dillion's name. The amount of time that I have been in the school field, I know that I could not rent a welding machine without authority of the Superintendent of Schools or the School Board (tr. p. 1116). I am acquainted with Mr. Beames (tr. p. 1116, 1117). I would say I've known him since 1948. Mr. Beames and I have worked with both management and labor in determining the training necessities of the area. We have committees of management and labor, advisory committees of management and labor to advise us in the methods and type of training that is needed. I only act as consultant to these committees. Mr. Beames is not on any of these [1438] committees. I do not recall that Mr. Beames has ever been on an appren-

ticeship committee. I could be mistaken. I believe I was contacted by counsel for defense about this possibly six months or a year ago (tr. p. 1117).

(Testimony of Bill J. Meler.)

My name is Bill J. Meler. I am steamfitter welder and a member of Local Union 598 and have been off and on for seven years. In the fall of 1954 I was dispatched to the job that is being run by Mr. Dillion (tr. p. 1118). I stayed there a day and a half. I quit because I wanted to go onto a better job in Oregon for W. R. O'Rourke Plumbing and Heating in Walla Walla. I had the O'Rourke job in mind about two and a half months. I had worked for him on a schoolhouse job and I was promised this job in Oregon at the Umatilla Ordnance Depot just as soon as it started (tr. p. 1119). When I quit Mr. Dillion I did not immediately go on the O'Rourke job (tr. p. 1119). The job wasn't taking men at that time. It was my understanding that they were. I found out they weren't during the week right after I quit Dillion. After I quit Dillion I went to Thorn and Marble and worked for them approximately six weeks on the job Mr. Dillion had. I didn't finish that job, I quit and was dispatched to O'Rourke at the job I wanted at Umatilla, Oregon (tr. p. 1120). I have seen Mr. Dillion since at Anacortes, Washington (tr. 1120). That was at the Shell Oil Refinery. I was assigned to the fabrication job and I was walking down the center aisle of the shop and Dillion was coming the other direction. We met in the center of the aisle and I stuck out my hand

and he said no, I won't shake hands with you. I had no other conversation with Mr. Dillion in Anacortes (tr. p. 1121). I now work at the chemical plant in Kennewick. W. W. Cape dispatched me to this job (tr. p. 1121). He is assistant business [1439] agent of Local 598 (tr. p. 1122). I don't work at all in the Tri-City area unless someone from that business office dispatches me (tr. p. 1122). When I quit Dillion's employment I felt assured that I had the job but I didn't know positively (tr. p. 1122). I am a married man with two children and was married in 1954 and had two children at that time (tr. p. 1122). I am not positive about the date I talked to Dillion in Anacortes. It was about May of 1955. No, I don't recall saying to Dillion, "Tater, I've been wanting to talk to you. I wanted to see you make it as much as anyone else but the Local pulled me off. It wasn't me, it was the Local." The only thing that he said, "No, I won't shake your hand," he said, "if you had gone off on another job instead of going to Thorn and Marble," he said, "I would have felt different." That was the sum total of the conversation.

(End of testimony of Meler.)

(Additional testimony of plaintiff Dillion.)

I heard Mr. Meler testify about an encounter between him and me in Anacortes. It was spring of '55 (tr. p. 1135). I met Mr. Meler almost in the middle of the shop when he first come in there and he wanted to shake hands with me and I told Mr. Meler that I didn't feel like that he was a friend of

mine, and there wasn't no use of me shaking his hand and he said, "Tater, I have been wanting to talk to you about this for a long time." He said, "it wasn't me," he said, "I wanted to see you make it, but," he said, "the union pulled me off of that job." Then I said, "Well, Mr. Meler," I says, "You could have made as much money with me as you could have with Thorn and Marble." And Mr. Meler said, "No," he said, "I done all right," he said, "I done good out of it."

[Endorsed]: Filed September 24, 1957. [1440]

United States District Court, Eastern District of Washington, Southern Division

Civil No. 978

W. C. DILLION,

Plaintiff,

vs.

PLUMBERS & STEAMFITTERS UNION, LOCAL No. 598 of Pasco, Washington; W. W. CAPE; RUDELL BEAMES; WILLIAM LAWSON; J. P. HEAD, d/b/a J. P. HEAD PLUMBING; J. L. MOKLER and JAMES MOKLER, d/b/a MOKLER PLUMBING & HEATING; R. E. RANDOLPH and E. L. TAYLOR, d/b/a RANDOLPH & TAYLOR PLUMBING & HEATING,

Defendants.

RECORD OF PROCEEDINGS AT THE TRIAL

* * *

The Court: All right. Two alternates.

Mr. Vance: One other matter, your Honor. The defendants that I represent, we have several affirmative defenses there, and I want to withdraw the fourth affirmative defense.

The Court: Oh, let's see——

Mr. Vance: The answer.

The Court: You have an amended complaint, haven't you, here?

Mr. Vance: Yes.

The Court: Molthan is not in the case any more?

Mr. Vance: No. Entitled the answer of Plumbers Local 598, is the document that I refer to. That is the one on fraud. It is drawn on Molthan's paper.

The Court: Oh, yes. Answer of Union, you say? Answer of Plumbers and Steamfitters Union?

Mr. Vance: Yes, that is it. Beginning at page 4, line 20, fourth affirmative defense.

The Court: Is that the one—let's see—on which page did you say?

Mr. Vance: Page four, toward the bottom of the page, line 20. [51]

The Court: Oh, I see, yes. That is the fourth defense?

Mr. Vance: Yes, your Honor. [52]

* * *

Plaintiff's Opening Statement

Mr. Gladstone: May it please the Court, ladies and gentlemen of the jury: At this point, you have

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

been sworn to hear the facts in the case and, upon hearing the facts, determine the outcome of the litigation.

I would like to identify for you the parties involved. This is the plaintiff W. C. Dillion, and several of the defendants. The defendant Union, represented by Mr. Beames, is in the grey suit sitting on the far side. The defendant J. P. Head, who is the owner and operator of a plumbing shop in Pasco, sits next to him. Mr. Mokler, who operates the firm of Mokler and Mokler Plumbing in Kennewick, sits next to him; and Mr. Randolph, of the plumbing firm of Randolph and Taylor, sits next to him.

Now, this action is one brought by Mr. Dillion against first the Union for a breach of contract. Mr. Dillion alleges that he entered into an agreement with the Union whereby they agreed to furnish him men, and they set forth the terms of employment and working conditions, which is called a collective bargaining agreement; that Mr. Dillion entered into the business of pipe fabricating and pipe [53] laying; that he asked for men in order to do the work, to do a contract that he had. He was furnished two men and they refused to furnish him any more. That this, then, constituted a breach of the agreement with them and that he was compelled to go out of business, lost his contract, and suffered damages thereby.

Now, we also allege a second cause of action, that is, a conspiracy, alleging that they breached their agreement, the Union breached its agreement with Mr. Dillion, in pursuance of a conspiracy; that the

Union entered into a conspiracy with the three operators of the plumbing shops that have been identified over here—Mr. Head, Mr. Randolph, and Mr. Mokler. They entered into a conspiracy to get Mr. Dillion from getting men, the purpose of the conspiracy being to keep him from becoming a competitor of theirs in the pipeline, pipe fabricating, business, that being also a business that they engaged in during this period of time.

Now, the actual time involved, the crucial time covered, was only a couple of weeks, but it started back in 1952 and really covers quite a long period of time in terms of what Mr. Dillion was doing, and we have here a calendar of events setting out what it is our intention to prove.

Now, I might say here that on the conspiracy action, and that is the action that we are putting [54] the greater emphasis on, as the Court mentioned in its opening remarks to you, a conspiracy action, of its very nature, is a secret type——

Mr. Burdell: Object to counsel's remarks in his opening statement.

The Court: Yes, the purpose of an opening statement is merely to tell the jury what you propose to prove. I think you should try to keep away from argument.

Mr. Gladstone: I would say on this point merely that the conspiracy action will involve evidence that is not direct; that conspiracy is that type of action where you don't find any direct testimony on what people are doing——

Mr. Burdell: Object to that.

Mr. Gladstone: ——but must be established circumstantially.

The Court: Well, I think I should say to the jury at the outset that they should bear in mind—and this applies to opening statements both of this plaintiff and defendants' opening statement when they make it—that it isn't evidence at all, it is just simply for your convenience to enable you to better follow the evidence that will be put on, and counsel's opening statement is simply to give you an idea of what he proposes to prove by his witnesses and by his evidence, and you must bear in mind always, of course, that it is the evidence itself that you are to go by and not [55] by counsel's statement if it isn't supported by the evidence.

I think counsel is pointing out that his evidence will be largely circumstantial. Now, that is what he is trying to tell you, I think.

Go ahead.

Mr. Gladstone: On the evidence itself, what we will attempt to show you here and what we intend to prove to you is that Mr. Dillion has spent his life learning the pipe laying, the pipe fitting, the pipe fabricating, business; that he has been associated with this trade for many, many years.

In 1952, he made the decision to go into fabricating in the Tri-City area. In March of 1953, he knew that he was going to have investment problems, as anybody does when they go into business; that he was going to have to obtain capital, so he started to build a home, that is, in his off hours he was build-

ing a home, so that when he wanted to get his money, he would have that as an asset that he could put a loan on to obtain money for his business. So that was in March of '53 when he was working at a trade he was building, as best he could, a start of his home.

Now, then, in December of 1953 he started acquiring, he was gathering together his equipment so that he could open [56] a shop.

In the summer of 1954, he had discussions with the Union men regarding the setting up of a shop. At that time he discussed with them what his plans were. Even at that time he talked with one of them in terms of "Would you be interested in going into such a venture with me?" Discussed that.

November 1st of 1954, he began to actually firm up his plans and he got a lease on a shop out at the Pasco Airport.

November 9th of 1954, one of his early meetings with the Union people or, that is, the Union Executive Board, the Board which you union men will know. That is a board that is elected to look after the affairs of the local union. It is a group of men that act somewhat as a board of directors. Met with them and discussed his plans and asked what he would have to do, and they informed him what he would have to do in order to get a collective bargaining agreement. They mentioned that one of the things that he would have to acquire or obtain and furnish was a bond, and this would be enlarged upon in the course of the evidence.

Then he obtained on November 10th an agreement

from the Union's attorney. Actually, it was a rough draft of an agreement furnished by the attorney's secretary. [57]

On November 15th, he obtained a letter from the Union's attorney, Mr. Molthan, regarding his bond, and on the evening of this date he met with the Union Executive Board. He indicated his desire to meet with them and they called a special meeting to talk to him about getting a collective bargaining agreement.

On that evening, they inspected his shop. He had set up his shop out at the Pasco Airport at that time. Most of his equipment and tools, and so forth, were still at his home. He hadn't moved that out to the shop because of the work that he contemplated doing if he got the collective bargaining agreement. Nevertheless, he had this location, and the Union Executive Board went out and looked it over.

Then on November 16th, he had another meeting with the Executive Board. That was their regular meeting night. He stopped in and talked with them and they were concerned at that time with whether or not Mr. Dillion had a contract for work, that is, a contract, where he could go into pipe fabricating and pipe laying, and they called Mr. Hopkins and determined that at that time he didn't, but Mr. Dillion informed them that there were these negotiations pending with Mr. Hopkins.

Then Mr. Lawson was brought in. Mr. Lawson was an assistant business agent for the union over there at that time. Mr. Lawson was brought in and the Executive Board [58] inquired of him as to Mr.

Dillion's qualifications. At that time it was determined that Mr. Dillion was entitled to a collective bargaining agreement.

An agreement was then obtained the next day from attorney Molthan, that is, the Union's attorney, and Mr. Dillion produced the bond that the Union desired, which is one of the qualifications.

Then Mr. Dillion saw Mr. Beames on the 18th. Mr. Beames was the business manager, and again you men who are union people know that there is a manager of the union and that is what Mr. Beames was, the business agent, and Dillion saw him regarding the signing of the agreement. The agreement had been written up but it hadn't been signed, and Rudy, Mr. Beames' first name, said that he would see him the next morning.

On the 19th, Mr. Dillion saw him again and did get a rundown. He was informed that there would be a certain investigation further by Mr. Beames as to whether or not he was entitled to it and discussions of that type.

Then on November 20th and 21st—this would be on Saturday and Sunday—Mr. Dillion met again with the individual members of the Executive Board, told them of the problems that he was having in getting the collective bargaining agreement signed, and they assured him that so far as they were concerned it was satisfactory and he should have [59] an agreement.

Then on the 22nd, another special meeting of the Executive Board was called at the request of Mr. Dillion to firm up this fact that he was entitled to a

collective bargaining agreement, and would be entitled to get that from the Union.

November 23rd, the agreement was finally signed by Mr. Lawson, or rather it was on the evening of the 22nd, and Mr. Dillion picked it up on the 23rd, but on November 26th Mr. Dillion asked for men, after he made known here in between the 25th and 26th, he made known to the Executive Board, or rather to Rudy Beames, the business manager, of the fact that he now had the collective bargaining agreement and he would be asking for men.

He did at this time firm up his work contract with a Mr. Lewis Hopkins. He firmed up an agreement with Mr. Lewis Hopkins whereby he would do a pipe laying job out in the Hanford Works near Richland. He firmed that up and he told Mr. Beames that he would be asking for men and Mr. Beames would not furnish him any men at that time.

Now, Mr. Head and Mr. Beames were together at this time. Also, on the 24th when Mr. Dillion contacted Mr. Hopkins, the man whom he had the work contract with, Mr. Hopkins and his superintendent informed him that Mr. Head had called up and said that he was going to see to it [60] that Dillion got no men. Mr. Head had also bid on this job out in the Hanford area attempting to get the contract from Mr. Hopkins, and he was still in contact with Mr. Hopkins.

On the 27th, Mr. Dillion asked for men, they were denied, and finally on the 29th two men were dispatched to him, one was a welder and one was an-

other worker. A welder went out to work for him. This man worked one day, then went up and told Mr. Dillion that "I have work elsewhere and I am going to leave the job."

Mr. Dillion tried on further attempts to get men from the Union, which were not fruitful at all. He got no men after that.

So that on the 30th of November, there was a meeting of what is termed a Joint Conference Board. The Joint Conference Board is a board comprised of three men belonging to the Masters, that is, the Master Plumbers are men that own shops and employ plumbers and employ pipe layers and the like of that.

Now, Mr. Randolph, Mr. Mokler, and Mr. Head were the members representing the Masters at that time that met with three members of labor, and at that time they also had the Executive Board meet with them, and we intend to show that that meeting was called at the urging of Mr. Head and that it was his purpose, by his own statements, to be a meeting to arrange for the cutting off of men for Mr. Dillion. [61]

Now, as I say, the actual tie-in of the action taken by Mr. Head and Mr. Randolph must necessarily be circumstantial. We can't pin down actually where they met, where they talked about it, but we feel we can furnish evidence to you which shows that they were participating in Mr. Head's endeavors to keep Mr. Dillion from getting men.

The Executive Board met again after the meet-

ing of the Joint Conference Board on this same evening. The Joint Conference Board adjourned, the Executive Board met. They confirmed again that so far as they were concerned Mr. Dillion was entitled to men.

Mr. Dillion went to Mr. Beames the next day to get men and Mr. Beames said, "Absolutely no, no men."

Now, if I have succeeded in making it plain to you, at this point probably one question has arisen in your mind and that is as to the liability of the Union if the Executive Board was going along with this proposition of giving Mr. Dillion men. We feel we will establish this for you also, that during this period of time, starting in the early part of 1954, that Mr. Beames was setting himself up actually and factually as the real representative of the Union, of that local Union; that he was sidestepping and pushing aside the Executive Board all the way along during that period of time; that it was his actions that constituted the actions of the Union really, and the Executive Board was [62] performing its function and they were saying to Mr. Dillion, "You are entitled to your men." It was Mr. Beames, the business manager, who had taken over and obtained control of that union so that he could by his actions and by his activities with these other men deprive Mr. Dillion of the men that he was seeking, keep him from carrying on with his contract, keep him from staying in business, so that he lost his investment, he lost the profit that he

would have made on that contract and the other contracts that could have been and would have been obtained there in the area. But that is the reason we say they are responsible and liable to Mr. Dillion in damages for what he has been out, because of those wrongful acts.

Now, we will attempt to maintain for you throughout the trial the calendar of events here so that you can follow this. There will be many witnesses testifying to events on certain dates and we will attempt to maintain this so that you can keep from getting into a morass of confusion, as I am sure you would without this reminder for you.

We will certainly appreciate your attention during the trial to our witnesses and feel that we can present the case as I have outlined it here.

Thank you.

The Court: Did you wish to make your statement now or reserve it? [63]

Mr. Burdell: I would like to make one now on behalf of my clients.

The Court: All right.

Mr. Vance: If your Honor please, the Union clients desire to reserve their statement.

The Court: All right.

Mr. Day: Your Honor, might I interject a question? Is it intended that counsel will divide their statements, make two separate statements?

The Court: Well, they are representing different clients. I think they have a right for each to make a statement for his particular client. I see no reason

why one can't make it now and the other reserve it if he wishes.

Go ahead. [64]

* * *

DEFENSE MOTIONS

Mr. Vance: * * * Come now the defendants Plumbers and Steamfitters Union, Local 598, W. W. Cape, Rudell Beames, and William Lawson, and move the Court to dismiss the case by reason of [1209] the insufficiency of the evidence to go to the jury. This motion is made——

The Court: Your motion is for directed verdict?

Mr. Vance: Yes, your Honor, or for dismissal.

The Court: I have been a long time on the bench, about ten years now, I still am not clear on whether or not a motion to dismiss is proper in a jury case at the close of the plaintiff's evidence. I know it is done both ways and I think in a case not long ago I granted a motion to dismiss, but I feel a little uncomfortable about it, because I wonder if it shouldn't be a directed verdict where there is a jury and a jury has been empaneled and has heard the plaintiff's evidence.

Mr. Vance: Well, I will make it jointly, a motion——

The Court: Make both of them.

Mr. Vance: ——for dismissal and a motion for directed verdict jointly and severally on the grounds of each and of those four defendants.

The Court: I don't know whether there would be any difference, I don't know whether it would be

with prejudice in a case of dismissal or not. A directed verdict, it would be with prejudice.

Mr. Vance: Yes, it would be.

The Court: A final determination.

Mr. Vance: I had quite an argument about that not so [1210] long ago in the state court.

The Court: All right, Mr. Burdell, have you any opinion to express about this matter, motion for directed verdict?

Mr. Vance: I just want to say I was going to put it in any form that I want my people out.

Excuse me, Mr. Burdell. If the Court please, that, of course, goes to both causes of action as far as the defendant Union is concerned.

The Court: You should move separately as to each cause of action because that is just the same as two lawsuits put under one cover for convenience.

Mr. Vance: That is correct. Well, maybe I'd better restate it.

Comes now the defendant Plumbers and Steamfitters Union, Local 598, and moves for a directed verdict or a dismissal of the action on the first cause of action alleged in plaintiff's complaint by reason of the insufficiency of the evidence against it and now adduced at the close of the plaintiff's case, and come now the four defendants, Plumbers and Steamfitters Union, Local 598, W. W. Cape, Rudell Beames, and William Lawson, and move for a directed verdict or a motion to dismiss the second cause of action alleged in plaintiff's complaint by reason of the insufficiency of the evidence against

either or all of them, this latter motion [1211] being made severally and jointly.

The Court: Your people are only in the second cause of action, I think, Mr. Burdell.

Mr. Burdell: That's right.

The Court: I think you were in Yakima, weren't you, when Mr. Gladstone made the statement when Mr. Molthan was arguing there—I just ran across it in the file here—he made the statement the first cause of action was directed to the Union only?

Mr. Burdell: Well, I think I was there. I always understood——

The Court: I assume that is the position of the plaintiff, isn't it?

Mr. Gladstone: Yes, your Honor.

The Court: I should think it would be, because the contract is only with the Union.

Mr. Burdell: Yes. On behalf of J. P. Head, J. L. Mokler, R. E. Randolph, and E. L. Taylor, and on behalf of each of them separately, I move that the court direct a verdict in favor of all and each of said defendants, and I also move that the Court dismiss this action as to all and each of said defendants on the following grounds:

That there is not sufficient evidence to submit to the jury or to sustain any verdict of a jury with respect to the issue of conspiracy under the Anti-Trust laws as to any [1212] or all of these defendants; on the second ground that there is not sufficient evidence to submit to the jury or to support a verdict of the jury with respect to the element which must be proved by the plaintiff, that

the conspiracy, if one did exist, was a conspiracy in restraint of interstate trade or commerce as that term is interpreted under the Sherman Act; third, on the grounds that there is not sufficient evidence to submit to the jury or to support a verdict of a jury as to all or any of these defendants on the issue of whether or not the conspiracy, if one did exist, was a conspiracy to injure the public or an unreasonable conspiracy in restraint of trade as that term is interpreted under the Anti-Trust laws; in other words, that there is no showing that the conspiracy, if one did exist, was one of the nature which would violate the Anti-Trust laws, even assuming some effect or restraint upon interstate commerce; fourth, that there is not sufficient evidence to submit to the jury or to sustain a verdict that the injury of the plaintiff, if any, was the proximate result of a conspiracy on the part of any or all of these defendants, if such conspiracy did exist; fifth, that there was no damage suffered by the plaintiff which is measurable; that all of the plaintiff's damages, and particularly all of those damages which could be traced to any conspiracy having any effect upon interstate commerce, [1213] are speculative, uncertain, too speculative and remote and uncertain to be measurable and to be submitted to the jury; and, finally, that on the ground that, assuming any conspiracy did exist, such conspiracy as shown on the evidence and the record so far is a conspiracy which is not a violation of the Anti-Trust laws because of the provision of the Clayton Act, I believe it is, or the provision of the Anti-

Trust laws, which provides that the labor of the union, a human being is not an article or commodity of commerce. My grounds in that connection are that this is an alleged conspiracy directed toward the furnishing of labor and for no other purpose, and it is not covered by the Anti-Trust laws.

Mr. Vance: If the Court please, I think I should add just one thing. In both causes of action, the Court's jurisdiction rests upon the jurisdictional statute relating to acts based upon commerce and insofar as the acts, both statutes involve the Anti-Trust act and the Labor-Management act, which are both bottomed on commerce. Of course, my motion would go as well to the insufficiency of the evidence to sustain the jurisdiction of the Court on commerce.

The Court: Yes. Of course, it is my understanding of it that interstate commerce has a much broader meaning and reach in the case of the National Labor Relations Board than it does in a case of the Sherman-Clayton acts. [1214]

Mr. Vance: No question about it.

The Court: Yes. If it indirectly affects commerce—well, I needn't go into that, but I just was going to ask you if you are going to argue on both causes of action or will you very largely, you think, adopt Mr. Burdell's argument as to the second cause of action?

Mr. Vance: Well, we had rather thought this, your Honor——

The Court: Pardon me for interrupting, but you do have this difference, that I think Mr. Bur-

dell's clients could be dismissed out of this action and still hold you labor people unless the law is such as to not warrant it. In other words, you have got enough to constitute a conspiracy with these individual labor representatives and officials and the Union itself. I don't know whether I make myself clear.

Mr. Vance: I think you do, your Honor.

The Court: Yes, you could exclude all these employers entirely and, under some circumstances if the proof were there, you could have a conspiracy which consisted of the business manager and the business agent and the unincorporated association of the Union itself conspiring to violate the Sherman Act.

Mr. Vance: Yes. Which, of course, I would argue. Yes, I understand. [1215]

The Court: My only point in saying that is you do have that difference. I hope you don't overlap too much.

Mr. Vance: What I had planned to say was Mr. Burdell and I took up this matter and, naturally, being here in Walla Walla by ourselves, we have worked together. Mr. Burdell, if it pleases the Court, for this agenda will open the argument. There is no way of segregating or dividing, I do not believe, the argument on the Anti-Trust. Every time you start to argue one facet, you run into all facets, as your Honor knows. I plan on letting Mr. Burdell assume the burden of making that argument and the only thing I will try to do is fill in if I think he has missed something or if your Honor suggests there is something peculiar to my clients.

The Court: I think we should have some understanding about the time. This could go on and on and on.

Mr. Vance: Well, I think that on the defendants' side I don't see how we can argue it in less than an hour and a half.

The Court: Well, I am not going to hold a night session. I suppose I should have excused the jury until tomorrow afternoon. It is too late for that now. I didn't realize it was so late here.

I wonder if it wouldn't be better, if counsel has no objection, if we met at 9 o'clock in the morning and [1216] start this? I think an hour on a side should be enough here.

I want you to bear this in mind, Mr. Vance, that you weren't in the case at that time, but so far as the law is concerned, I think almost identical questions here were argued at great length, exhaustively, to the Court in Yakima. Mr. Molthan represented the Union and Mr. Burdell represented the employers and many of these same cases he is going to argue tomorrow on this have already been argued in Yakima, and at that time I said that I didn't like to decide it on a motion to dismiss on the pleadings, that I would rather wait until the proof is in, so I am not coming into it cold and I have read most of the cases that you have cited to me, so I think you should be able to make your points——

Mr. Vance: I may be over-pessimistic. I have a transcription of one of the arguments before your Honor; I believe there were two.

The Court: Weren't there two different occasions, Mr. Burdell?

Mr. Burdell: Yes, your Honor, there was a motion to dismiss the original and then the amended complaint. I have one, but I don't have both.

The Court: I don't know whether there was a transcript made of one of the arguments or not, but would an [1217] hour be sufficient on your side, do you think?

Mr. Gladstone: I am sure it would.

Mr. Burdell: I wouldn't want to bet it wouldn't take at least an hour.

The Court: Beg your pardon?

Mr. Burdell: I don't think we could in justification to our clients present this matter, these motions, in less than an hour and a half. We might do it in an hour, but we would have to be going awfully fast. We would try and attempt to. I mean we may come to points that the Court might say, well, it is satisfied about this point or that point or makes some indication that it is so dissatisfied with that point, go on to something else.

The Court: If you find you are not having enough time, I can always extend it and give the other side an equal amount, of course. Looks like it might take all forenoon if we meet at 9, but I will have the jury coming back in anyway.

I will adjourn then until 9 o'clock tomorrow morning and start the argument then.

(Whereupon, the trial in the instant cause was adjourned until 9 a.m., Thursday, January 17, 1957.) [1218]

January 17, 1957, 9 o'Clock A.M.

(Whereupon, the trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had out of the presence of the jury:)

The Court: I am going to shorten this argument as much as possible, give both sides an opportunity to argue the matter fully, however, so far as any question, any doubt, is concerned.

We all know, of course, that at this stage of the lawsuit the only problem the Court has is to determine whether or not there is any evidence or reasonable inference from the evidence here on which a jury could find a verdict in favor of the plaintiff, and that is viewing the evidence in the light most favorable to the plaintiff.

So far as the first cause of action is concerned, I am inclined to think that there was a duty to furnish men under the contract, and I don't think that that need be based solely upon the closed shop provision of the contract, that the employer was required to get his labor supply from the union. I think that the Court may properly take into consideration the attendant circumstances and the background and the situation that led up to the making of the contract [1219] and the evidence here which the jury could believe is that there was no supply of skilled labor, the welders, which the plaintiff would need in order to perform his subcontract with Hopkins in the Tri-City area except through

the Union. That is the only place he could get his men. He couldn't perform the contract unless he got them and, with full knowledge of both parties, he went to the defendant Union and told them, "I will have to have an arrangement to have men from you or I can't get this contract, Hopkins won't give it to me," and on that basis the Union gave him his contract. He had nothing to say, he was helpless, he had to take what they gave, and they gave him this contract which had the closed shop provision in it, and then I think it could reasonably be inferred from all the circumstances here, which I shall not detail, that there was a failure to furnish men to the plaintiff on the job, at least there is a question there, I think, for the jury to determine, and I don't like to base it on the principle of estoppel, but maybe a second cousin to it, I don't think they should be permitted now to say, "This contract, which we gave you and which we required you to take and which you had to have in order to perform your contract, we now claim that there was an illegal provision in it and we are going to take advantage of that illegal provision and prevent you from recovery," so I will hear you gentlemen on the second cause of action. [1220]

Go ahead, Mr. Gladstone.

(Whereupon oral argument was made to the Court by all counsel dealing with the second cause of action, after which the following proceedings were had:)

RULING ON MOTIONS

The Court: I am always reluctant to in any way invade the province of the jury. Where the parties have demanded a jury trial, they have a right to a trial of any issue of fact by the jury, and unless I am very clearly of the view that there isn't any substantial evidence or reasonable inference from the evidence on which a verdict could be based, I usually submit the case to the jury. However, I don't think it is proper for a judge, if he is convinced that there isn't a jury issue, to do what one of my lawyer friends suggested that I do not long ago, submit every case to the jury and then maybe the jury will solve my problem, won't have to pass upon the sufficiency of the evidence, but some years ago I did just about that and the jury came out with the wrong answer and I was obliged to set aside the verdict, and I think one of the jurors properly complained to me. He said, "Why in the world did you submit this case to us when you knew all the time that if we returned a verdict for the plaintiff, you would set aside the verdict?" and I think that is a legitimate complaint. I think it is the judge's duty to view the evidence before the case is submitted to determine whether [1221] there is a jury question or not. And in this case, I think that I have allowed wide latitude to the plaintiff, I am aware of the fact that a conspiracy usually must be proven by substantial evidence, and on most of these contested questions I thought I was quite liberal with the plaintiff and allowed them wide latitude in

bringing in everything that they could here to show a conspiracy under the second cause of action, and I just don't think it is thick enough. It just isn't thick enough.

There isn't evidence here on which any trier of the facts could find properly a conspiracy in this case. And I have in mind, as I mentioned awhile ago, if these men are guilty of violation of the Sherman Act, which would make them liable in treble damages on the civil action, they have committed a criminal offense for which they could be indicted and, of course, I have in mind that in a criminal case the degree of proof required is proof beyond a reasonable doubt, rather than proof by a fair preponderance of the evidence, but at this stage I am in exactly the same situation here now as I would be if these men were under indictment and I faced the question of whether I should submit to the jury the question of whether they should be found guilty of a criminal offense, and can you imagine any court sustaining a felony conviction against Randolph and Mokler, particularly, on this evidence that has been submitted here? [1222]

I know that the jury is entitled to draw reasonable inferences, and where there are two that may be drawn, one pointing toward liability and the other not, that the jury is the one to draw the conflicting inferences, but I think also that we are obliged to assume, until the contrary is shown or until a reasonable inference to the contrary may be drawn, that people act from decent and proper motives, and we can't certainly base a verdict or

permit a verdict to be based on speculation and conjecture that while somebody, while they appeared to be acting properly and in good faith, could possibly be acting from bad motives and be carrying forward some undercover conspiracy.

What I have in mind is here that these men, according to this evidence, Mokler, Head and Randolph attended this meeting of the 29th. Whether they were actually legally members of the conference representing the employers or not, the evidence certainly is, there is nothing to the contrary, that they thought they were and were assuming to act. And Mokler didn't stir this thing up, he didn't volunteer to go, he was called and asked to substitute for somebody who couldn't be there, and there is nothing to the contrary here and these men went down ostensibly acting in a conference as representatives of the employers to inquire into the contract which had been [1223] questioned, and they were lawfully there for a proper purpose, and I don't think that we should go out of our way to assume that it was a product of some deep, dark conspiracy.

So far as Mr. Head is concerned, there are statements that he made there from which the jury could infer that he might have had a purpose to keep Dillion from getting the men that he needed on the job, but it hasn't apparently been in the argument here, wasn't seriously questioned, that under Hunt v. Crombach the Union would not be guilty of violation of the Sherman Act for refusing to furnish labor to an employer, even though that arrangement

is, as Mr. Vance pointed out, an arrangement and contract with one employer.

Now, if the Union can't be guilty of conspiracy under these circumstances here, and I am convinced that that is true under Hunt v. Crombach, then we have got, assuming that the evidence is sufficient as to Mr. Head, one conspirator here, and, of course, as everybody knows, you have to have two, you can't have just one conspirator.

And on the factual evidence here, I am not going to go into it in great detail, but I have listened attentively and have scrupulously made notes on everything I thought could be brought to bear here and bring in Mr. Randolph and Mr. Mokler into this case, and I just don't [1224] think it is sufficient to show that they were joined or created or participated in a conspiracy with anybody else to keep Mr. Dillion from getting the men he needed to perform the Hopkins contract.

Now, we have, too, I think, the serious question of whether there was a substantial restraint of interstate commerce here and I think that Mr. Burdell's argument was, in the main, sound on that. I am not going to try to reiterate it or even summarize it. As I think I indicated in my remarks from the bench here, I can't see where the Hopkins contract could possibly involve a restraint of interstate commerce as it is defined for purposes of the Sherman Act in the decisions.

The pipe was furnished; all that the contract called for was welding it and putting it into place;

and I thought it was very significant the length to which counsel for the plaintiff was required to go in trying to meet the Court's objections or comments from the bench in suggesting that the supplies that were used in welding pipe could be the subject of substantial interstate commerce which would be restrained in this case. As a matter of fact, of course, so far as the Hopkins contract and Dillion were concerned, there wasn't one ounce of interstate commerce that would have been any different whether Hopkins did that job or whether Dillion did that job. Just exactly the same [1225] number of ounces of materials move in interstate commerce and did move when Thorn and Marble did the job as if Dillion had done it, so that there wasn't any substantial restraint of interstate commerce so far as the contract is concerned, and there are two things I think wrong with saying that because Mr. Dillion says he intended to go into the pipe fabrication business, that keeping him from doing so would restrain interstate commerce:

I don't think that future intentions of one engaged in an industry can be regarded as actually affecting interstate commerce, and another thing that I think is wrong with that is that I don't recall any evidence here that any of these men who I might designate as the employer defendants had any knowledge that Mr. Dillion contemplated going into the pipe fabrication business before this meeting of the 29th. Certainly not more than one of them, I should say, has been shown to have any such knowledge, I don't know that there is any

evidence that any of them had knowledge, and if you assume they were in a conspiracy, it was a conspiracy to keep Dillion from getting men to perform his contract with Hopkins and it certainly would be going a long way out into the woods to assume that they knew and could reasonably contemplate that if they kept Dillion from getting welders to perform this little contract, that it would put him out of business, that his financial condition was so [1226] shaky, that this one contract, losing it would cause him to have to close up his fabrication business and fold up his tent and to go out of business entirely in the Tri-City area.

Now, I think a third consideration here is that there must be shown an injury to the public, as well as to an individual, and that the Sherman Act has as its primary purpose the protection of the public against monopolies and against stifling competition in interstate commerce, and that is, I think, indicated by the treble damage provision. The reason that a private individual is given treble damages if he proves violation of the Sherman Act which causes him damage is to aid in its enforcement. It offers a reward to people who will get out and bring actions that will enforce the law, but it is an enforcement policy in the aid or in furtherance of the public interest which is regarded as of primary importance.

I think a case that bears that out, and I will not read at great length from the opinion, but the case of Feddersen Motors v. Ward, which is a 10th Cir-

cuit case reported in 180 F. (2d) 519, and reading from page 521 the opinion states:

"Its primary purpose——

that is, the Sherman Act——

"Its primary purpose was to prevent undue [1227] restraints of interstate commerce in the public interest, and to afford protection of the public from the subversive or coercive influences of monopolistic efforts. The right granted to individual suitors to seek reparation was secondary and subordinate in purpose."

And then again on page 522:

"And in a case of this kind brought by an individual suitor for the recovery of three-fold damages, it is essential that the complaint allege a violation of the Act in the form of undue restriction or obstruction of interstate commerce and damages to plaintiff proximately resulting from the acts and conduct which constitute the violation. But injury to plaintiff alone is not enough upon which to predicate such an action. There must be harm to the general public in the form of undue restriction of interstate commerce."

And here it seems to me you have, assuming that the evidence is sufficient to show a conspiracy to put Dillion out of business, only one small operator involved and not the damage to the public which I think would be essential in a [1228] case of this kind.

Now, counsel seem to rely heavily on this so-called Las Vegas case, Las Vegas Merchant Plumb-

ers Association v. United States, but there we have a far different situation from the one in this case, and I think I can illustrate that by reading briefly from the opinion. That is a 9th Circuit case that is reported in 210 F. (2d) 732. It was a criminal action in which the question involved was the sufficiency of the indictment to state an offense in violation of the Sherman Act, and the allegations of the indictment are summarized in the opinion beginning on page 738, as follows:

"In summary it (the indictment) alleges: Practically all plumbing and heating supplies used in southern Nevada are manufactured in other states and are sold and shipped in interstate commerce into Nevada. Plumbing contractors then distribute, sell and install these supplies and make a charge and obtain a profit from both the selling and installing; over three-fourths of all such supplies so used in southern Nevada are distributed, sold and installed by plumbing contractors who are members of the defendant association and [1229] defendant Exchange, and a major part of all such supplies are distributed, sold and installed by the defendant plumbing contractors. The service performed by plumbing contractors in distributing, selling and installing such supplies is an integral part of, and necessary to the movement in interstate commerce of such supplies; plumbing contractors are conduits for such movement, such supplies flow in a continuous, uninterrupted stream from points of origin out of state to places of use and installation in southern Nevada."

Now, here is the offense that was charged here, what it is alleged that the defendants did in the indictment to violate the Sherman Act. First it recites the general terms:

"The indictment alleges that beginning in August, 1950, and continuing until the return of the indictment the defendants named and others unknown, have conspired to unreasonably suppress and eliminate competition in the sale and distribution of plumbing and heating supplies in restraint of the interstate trade and commerce." [1230]

It then describes what they did:

"It then describes a scheme to fix prices and to divide the available market by the employment and use of an 'estimator' who would figure a plumbing job and fix the price, to which the plumbing contractors would adhere. If two or more plumbing contractors were to bid on the job, an allocation committee would designate who should submit the lowest bid. Complimentary and fictitious bids at higher prices would be used. To enforce compliance with and adherence to the plan, defendant Alsup would induce journeymen and apprentice plumbers not to work on any job for any plumbing contractor other than the one designated; that wholesalers would be boycotted if they sold or offered to sell such supplies at prices and terms not agreeable to defendant plumbing contractors."

There we have a conspiracy among a group of people in the plumbing contracting industry who controlled a substantial proportion, percentage, of all of the trade and industry in southern Nevada,

a conspiracy to fix prices, to allocate jobs, to boycott wholesalers who didn't deal with them, to control labor supplies, which is certainly a far cry from [1231] any conspiracy, assuming that it has been proven, to keep one small contractor in the Tri-City area from getting men to perform a particular subcontract involving, I think, a $30,000 job.

Now, I try to decide the cases on my own without any regard to what an appellate court will do, I think any trial judge that is worth his salt does, but I think I can say this, that I think if I let this case go to the jury on the second cause of action and a substantial verdict were returned, which the plaintiff hopes for, that it would be a doubtful kindness to this plaintiff, because if I were estimating for Lloyds of London and representing them—I understand they insure almost anything—I would offer very, very heavy odds that a verdict on the second cause of action would be reversed by the Court of Appeals of the Ninth Circuit.

So that the motion will be granted as to the second cause of action.

Now, I don't know what you had in mind, Mr. Burdell, you are principally interested here, I presume, if you wish to prepare a directed verdict. I think the procedure that I have followed on a directed verdict, there are two ways of doing it. You can send the jury out and tell them to bring in this verdict, or I can appoint a foreman and direct him in open court to sign a verdict. [1232]

* * *

(Whereupon, the following proceedings were had in the presence of the jury:)

The Court: As you probably have inferred, ladies and gentlemen of the jury, there has been a great deal of argument on law questions here since I last excused you. I believe I told you at the outset of this case, at any rate it is an instruction that I usually give, that the Court, that is to say, the Judge, and the jury have entirely different functions and different duties that complement [1239] each other in a jury trial. The jury is solely responsible for deciding questions of fact that arise on the evidence that is introduced for your consideration; the judge is solely responsible for deciding questions of law.

Now, as was pointed out to you in the opening statement of counsel here, there are two causes of action which the plaintiff is asserting in his complaint, which is his formal pleading here, the first cause of action and the second cause of action. Now, for reasons which I need not explain or detail to the jury, purely as a question of law, the Court is directing you to return a verdict for the defendants on the second cause of action, which means, in practical effect, that the second cause of action is withdrawn from your consideration, and the case will proceed on the first cause of action, which is the action by the plaintiff, W. C. Dillion, against the Plumbers and Steamfitters Union, Local No. 598, for claimed damages for an alleged breach of contract that Mr. Dillion claims he had with the Union.

Now, this matter where the Court decides on a cause of action as a question of law, it is a mere formality for the jury to return a verdict under direction of the Court, so for purposes of this second cause of action only, I shall appoint Mr. Anderson, who is No. 1 here, as foreman and direct that he sign this verdict for the defendants on [1240] the second cause of action.

(The foreman signed the verdict.)

The Court: All right, the directed verdict as to the second cause of action signed by Mr. Anderson will be received and filed, and the jury will be excused until 1:30 this afternoon, then we will proceed at 1:30. You may step out. Court will remain in session for a few minutes.

(Whereupon, the following proceedings were had out of the presence of the jury:)

The Court: I think that in cases of directed verdict, the same as any other instructions, that counsel should have the privilege of taking exception in the absence of the jury to the Court's instructions, and you may do so now at this time, if you wish to, for the record.

I assume that the plaintiff will except on the ground that the direction of the verdict is improper, but have you anything other than that, Mr. Gladstone?

Mr. Gladstone: No, I would like to have the record show that the plaintiff does except to the direction of the verdict on the second cause of action

on the grounds and for the reason that plaintiff feels that under the facts and the reasonable inferences to be gained therefrom, all of the facts and circumstances necessary to be proven to recover under the second cause of action have been shown.

The Court: All right. [1241]

* * *

DEFENSE MOTIONS

Mr. Vance: If the Court please, I have a couple of matters I think should be taken up in the absence of the jury.

One is that the defendant union, now at the close of all the evidence in the case, moves the Court to dismiss the action and for a directed verdict on the grounds of the insufficiency of the evidence and on the grounds of the affirmative defense regarding the illegality of the clause in question which we argued at the close of the plaintiff's case, and I would gather from all the circumstances surrounding this matter that the Court is not interested in argument on this.

The Court: No, I think it has been fully presented.

Mr. Vance: Then, if your Honor please, I indicated to the Court yesterday that I would have some kind [1279] of a motion concerning the striking of testimony and possibly exhibits because of the dismissal of the second cause of action.

Within the time allotted to me and the skimpiness of my notes, I am unable to make any motion

in that regard and do not make a motion and I am not claiming that I am deprived of any opportunity. I didn't mean to leave that in the record. I simply was trying to take any blame off my own shoulders, too, I am not in a position to make such a motion.

The Court: I am glad you mentioned that because I had in mind at an earlier time and overlooked it that I think immediately following your proposal with reference to explaining to the jury that the second cause of action has been withdrawn from their consideration, that I should instruct them to consider only evidence that bears upon the issue raised by the first cause of action and entirely disregard any evidence, whether it is documentary or oral testimony, that pertains only to the second cause of action.

It will be very difficult for me, and I think for anybody, to go through this record and weed out the ones, some of them pertaining to both, of course. There wasn't a great deal of documentary evidence, that I recall, that was exclusively on the second cause of [1280] action. One was Mr. Randolph's letter calling the conference, which would clearly be a document that would have no bearing on the first cause of action.

Mr. Vance: That is what I was leading up to was to ask the Court to instruct the jury.

The Court: I will give a general instruction.

Mr. Vance: The second thing, and this is in the nature of an oral request for an instruction, is the Court has indicated refusal of one of our proposed instructions, but I do move the Court to instruct

the jury that in assessing damages it may not consider any prospective profits of any job other than the Lewis Hopkins contract. I think that any general instruction that permitted them to do that would permit them to——

The Court: I think you are entitled to that. First, I had in mind giving your instruction, then I thought it was a little too strong on the exclusive side here, but I think you are entitled to that instruction.

Does counsel wish to be heard on that?

Mr. Gladstone: Yes, your Honor. We feel that one of the specific items of damage, it is an overall item, is the matter of the loss of the entire business.

The Court: Well, that is a different matter, loss of an existing business, but you certainly can't contend that if the plaintiff here hadn't been put out of [1281] business, as you contend he was, that he could have bid on and got contracts with the Atomic Energy Commission. Possibly he might have got a big contract like Kaiser did and have lost prospective profits running into the millions. That is something that surely wouldn't be the basis of damages.

Mr. Gladstone: I mentioned his loss of business just as a preamble for the reason why we felt that it tied in. We feel that the jury should be instructed to determine the damages that reasonably flow; that in determining the value of the business, they could consider the contacts that he had made, whether or not it would be reasonable that he would have continued in business for any period of time that was within reason and might reasonably could

have expected, considering the tools, the equipment that he had, the background that this man had, and the contacts that he had made, all of these things, just whether it would be reasonable for him to have continued in business, which would be an item appropriate for their consideration in determining the overall value of the business that he lost.

The Court: And would have got a construction contract for a million and a half dollars on which he might have made a profit of $500,000 and, therefore, $500,000 would be reasonable for the jury to award. [1282]

I will tell you, a verdict based on that kind of instruction, the verdict wouldn't be worth a plug nickel to you, the Court of Appeals would reverse it so fast you would have it right back here again, and I think I ought to instruct the jury that they shouldn't consider prospective profits on contracts which he doesn't have which he might get in the future. That doesn't keep you from arguing the business loss and what his prospects were on that.

Mr. Gladstone: May I ask, then, if our argument was along the line that I have outlined, would I be outside the instructions?

The Court: No, as long as you keep away from the profits which he might have earned on contracts which he might have procured had he stayed in business and which he didn't have at the time he quit.

Mr. Day: I was thinking, your Honor, of alluding, for instance, to the testimony of all of the

adverse witnesses that there was a great demand or need for fabricators, subcontractors.

The Court: Well, that is business prospects in the light of the circumstances there. I don't think that that would be out of line.

But what I have in mind is, and I think what counsel perhaps has in mind or what I understood from [1283] his proposal, that you couldn't count profits that he might have made on construction contracts which might have been awarded to him and on which he might have made a future profit had he stayed in business.

That isn't so difficult to understand, is it? It isn't to me, anyway.

Mr. Vance: That is what I had in mind.

The Court: I will give enough of your proposal to cover that. I don't want to take any more time than we have to here. Not going to finish by noon if we don't hurry here. You have an hour on a side, take half an hour to instruct the jury, if we don't get started pretty soon, we won't finish this before lunchtime.

Mr. Gladstone: Your Honor, if Mr. Vance is through, I would like also to make one additional inquiry because I don't want to get outside the instructions.

The Court: Yes, all right.

Mr. Gladstone: The matter of arguing attorney fees to the jury, would the Court consider that to be appropriate?

The Court: You mean attorney fees to be allowed to the plaintiff?

Mr. Gladstone: Yes.

The Court: I am not sure that I understand you. You are entitled to reasonable attorney fees under the [1284] Sherman Act, but you are not on this first cause of action, are you?

Mr. Vance: That is my impression.

The Court: Yes, I know of no provision in the National Labor Relations Act that gives you a reasonable attorney fee where you are suing a union for breach of contract. On the second cause of action, yes, you would be entitled there to reasonable attorney fees.

Mr. Vance: Yes, there is no provision, as far as I know, in the Labor-management contract. It leaves the common law of damages.

The Court: Of course, if you have in mind telling the jury, "You ought to give the plaintiff a good round sum because we are going to take a big bite out of it," no, that isn't proper argument.

All right, bring them in.

* * *

OPENING ARGUMENT

By Mr. Gladstone:

May it please the Court, ladies and gentlemen of the jury:

We would thank you, and I am sure all involved [1285] thank you, for the time that you have given us here, two weeks of your time. If you haven't had jury time before, served on a jury, you appreciate that the time that you have given is time

devoted to a service that every citizen in our country is entitled to. When there is a dispute, it can be settled, they seek redress in the courts and ask that the dispute be settled. They submit it to the court or they ask for a group of fellow citizens and they submit the dispute to them. They say, "Here are the facts as we see them;" the other side says, "Here are the facts as we see them;" and they ask you folks to determine who is right and who is wrong, and we have reached that point in our proceeding here. We have taken two weeks of your time that you have given under this jury system to settle the dispute between these people.

Now, on this cause of action that we are submitting for your consideration now, it is a breach of contract action. You have before you the evidence as to the agreement, the specific agreement that we claim has been breached by the union with Mr. Dillion, the agreement being that they were going to furnish him men. You understand the circumstances that led up to this, that he was seeking men, he wanted to set himself up in business; realizing that the type of business that he was going [1286] into was of a type that he would need qualified trades people, qualified welders, qualified fitters, to do his work; that the source for these men was the union there at Pasco in the area where he wanted to go into business; that he informed the union, union officials, of his desires in this respect. They were well informed of what he wanted to do. He informed them even specifically of the

job that he wanted to do, that is, the job out with Lewis Hopkins that has been testified to.

Now, then, you are also as familiar with the circumstances as any of us as to what they did. You know that he made endeavors, certain endeavors that have been testified to, to obtain men. You have heard the evidence as to the date that the agreement was signed and which, although it is somewhat in dispute, was at least on or before the 22nd of November. Some evidence that it was signed before that date, but in any event it was signed by the 22nd and picked up by him on the 23rd, and it was on that date that he started his endeavors to obtain men. It was on that date that he firmed up his contract with Lewis Hopkins and actually needed the men and he commenced his endeavors at that point to obtain men, contacting first one man and then the other, until finally he brought in his own brother. After a week of trying to get men from the union, he brought in his own [1287] brother, Al Dillion, from Texas, brought him up and got him dispatched from the union. The union could hardly refuse to dispatch that man, and they dispatched one more, one more man, who testified yesterday, Mr. Meler. He worked for him one day, and I would ask that you consider all of these circumstances and the background there existing on the matter of whether or not Mr. Meler, at the time he was dispatched and at the time he left, was actually in good faith going to go to another job down in Oregon. Consider the position that the union had taken regarding Mr. Dillion's contract

prior to that time; that is, in the week preceding the dispatch of the two men; consider the many contacts that Mr. Dillion made during that period of time, and consider also in this respect the records there of the men that were dispatched. You have the dispatch books, consider the many men that the union dispatched and sent out on these jobs at the very time when Mr. Dillion was attempting to get his men.

These are the things that we are submitting to you and saying here is the agreement, this is what they agreed to do, this is what Mr. Dillion did trying to get them to live up to their agreement, and this is what they did, they did not live up to their agreement.

Mr. Dillion had for many months been building up to this time when he could go into business. He was a [1288] man that had followed his trade a long, long time. He had built up the equipment, he had built up what he felt was the experience, and he was going in to the union just asking one thing, "Give me a fair shake. Give me a fair deal like you give these other people." That is what Mr. Dillion wanted, and we submit that the facts that we have shown you here indicate that Mr. Dillion did not get a fair deal; we submit that the facts show he did not get men; because he didn't get his men, he lost his investment in time, in money, and in his endeavors in building up his business. We have itemized these before and I am just going to recap them.

First, he invested in the bond that he was re-

quired to put up. He made an investment there, he paid a premium on it. He bought his necessary supplies, payroll checks, paid for his phone, his rent, his insurance. There are exhibits in here of those, you will have those, you can look at them. They will confirm the fact that he did make these expenditures totaling $207.58.

He also drove a number of miles in acquiring his equipment and his materials. He made a number of contacts, necessary contacts, to the business that he was going into, and I hope that your memory is better than mine because I lost my notes on what he testified to, but you will check in your own mind those figures. As I [1289] can best recall, the miles were 3,000 and he indicated to you that his opinion as to the value was ten cents a mile, which would make it $300. And his hours spent again on this mileage, I would have you check me in your own mind, your own memory, but my recollection is that it was 500 hours, and his opinion was his time at that time was worth five dollars an hour, or $2,500.

Now, you also have before you the agreement that he had with Mr. Hopkins. You know that, first of all, there is a work status chart by Mr. Hopkins that is in the file. There are two items there. One is welding of pipe and he has an estimate on that of $23,000; there is an item there for placing of pipe, $19,000.

Now, you will recall in the deposition that we read of Mr. Thorn that he stated—Thorn and Marble, you recall, is the firm that completed the contract that Dillion had and you will recall that

it was testified by Mr. Thorn that all their firm did was weld the pipe. They didn't handle it, they didn't place it, they didn't string it in line for welding. All they did was weld it and that would be this figure here, he did it for $13,000. This is the additional work that Mr. Dillion was going to do under his agreement with Mr. Hopkins.

So we submit if he had done it according to the estimate—of course, I shouldn't say that Mr. Dillion [1290] was going to do it all, because I do feel that Mr. Hopkins qualified this to a certain extent when he said that this was a composite job—that Mr. Dillion, he and others, were all going to take care of the matter of placing—but I would submit here that Mr. Dillion's expense and his contribution had he done that would have been $10,000. I don't feel we are getting to the realm of speculation there. I feel that you can take into account what Mr. Hopkins said about the contribution that each was to do on the composite job of laying and placing the pipe.

Then you have a total of $23,000, and what per cent was Mr. Dillion entitled to of that amount? You have two figures submitted to you. Mr. Dillion informed you that the percentage that he was entitled to, or would have been entitled to, under his contract with Mr. Hopkins was 25 per cent. You will find, if you have not already noticed it, that that figure was blank in the contract and you will have to determine which is the correct percentage, whether 25 per cent, as testified to by Mr. Dillion, or 15 per cent that Mr. Hopkins testified to. You

will recall that Mr. Hopkins prefaced his statement as to the percentage by saying, "I want to change my statement in my deposition and say that it was 15 per cent." Now, we submit that the appropriate percentage, [1291] the percentage that they had actually agreed upon, was 25 per cent, that it was one-fourth, and that Mr. Dillion then would be entitled to one-fourth of $23,000 as his percentage of that contract, $5,750.

Now, this, we say, is what Mr. Dillion was out, what he had actually invested, as I say, in time and in money and in his own endeavors up to this point, and the amount on the contract. The reason I am including that here is because we feel that the contract was established. You don't have to speculate as to whether he in his business venture here could have possibly gotten a contract; you do know that he did have a contract. That is why I am including this in what he had accomplished in his business. This, we say, would be that total.

Now, in addition, there was an investment in equipment. You recall that he bought welding machines, a generator, a truck, a pickup, and he improved the pickup, he bought a torch, he bought dies, he bought tools and skids, and his total investment there was $3,069.50. He sold much of this equipment and he realized from the sales $2,350. This, we submit, is what he was out of pocket in the sense that I have spoken to you about.

Now, in addition to this, what Mr. Dillion actually lost was, as I mentioned previously, his [1292] business. When they cut him off from men, he made

endeavors to get men by repeated contacts not merely with the Business Agents, but he went also to representatives of the Atomic Energy Commission, he called the National Labor Relations Board, he went to the highest local representative of the union, Mr. Bilderbach, of the International. He contacted all of these people, was on the go continuously day after day trying to get men, and it was this that cut him off, not merely from what he had here, but cut off his business entirely, and we submit that he is entitled to recover the value of his business at that time. They cut him off, he lost his business, not a business that had just been in operation for a day, but had been in the process of being built up for many, many months. When you consider the period of time that he actually had his agreement with the union and the period of time when he was cut off entirely, it would appear that his business operations were very short, but when you consider that he was building up a business for a long period of time, he was making acquisitions, making his contacts, getting ready to go into business, you will see that his business operation actually had built up to substantially more at that time than a few days operation. And it is on that basis that we submit to you that you should determine the fair value in your own [1293] minds, the fair value of Mr. Dillion's business at that time, and I think that you can use these figures as a guide, particularly when you consider that here Mr. Dillion had a contract with Mr. Hopkins and had he been able to complete it on the basis that we have submitted, he would

have made $5,750 on his percentage. You know the contacts that he made, the various people that he talked to, these things you should run over in your own mind to determine how reasonable they are, that is, I mean whether it is reasonable to make them, but was it reasonable for having those things in mind that his business would have continued, understanding the contacts, keep in mind the equipment that he had, keep in mind the place where he was, the intending to operate, keep in mind all of the comments that were made about the type of business that Mr. Dillion wanted to go into, consider all these things as to whether or not Mr. Dillion had a business that had a future, at that time whether or not it was a business that had any real worth, and we submit that that is the figure that you must arrive at here, that is a fair figure as to the value of Mr. Dillion's business here.

Now I am going to put down a figure. I am going to ask you in your own mind to determine, keeping all of those factors in mind, what was the value of Mr. [1294] Dillion's business at the time they cut him off.

Now I would want to just say this in concluding, that, as I mentioned at the outset, Mr. Dillion sought what was fair. You are being asked in one of your instructions here to determine, if you find for Mr. Dillion, what is fair. That is all he has asked of the union, that is all he asks of you, that you give him fair consideration.

Thank you. [1295]

* * *

INSTRUCTIONS

The Court: Now, ladies and gentlemen, it is almost noon but I think it is best for all concerned for [1314] me to go ahead and give my instructions before we sent you out to lunch and then you have the case and will be ready to start deliberating as soon as you get back from lunch.

It is the duty of the judge in a case of this kind to instruct the jury on the rules of law which you are to follow, and it is the exclusive function and duty of the jury to find the facts and, of course, those facts should be found only from the evidence that has been admitted for your consideration, the oral testimony and the documents that have been admitted as exhibits.

For those of you who have served on juries in the state court, the state courts, I think as counsel pointed out, the procedure is somewhat different. In the state court the judge not only instructs the jury in advance of the argument, but the instructions are settled and typed out and copies of them are given to the attorneys and a copy is given to the jury when they retire to the jury room. That isn't done in Federal Court. In Federal Court the judge instructs after the argument and he doesn't give the jury, as a rule, at any rate, and that is the procedure in this court, doesn't give the jury a typed copy of the instructions which they may take with them. Of course, a very obvious reason for that is a Federal judge, if he saw fit to do so, could give [1315] his instructions wholly orally, off the

cuff, as I am doing now. That is the way I would like to give them, as a matter of fact, but it isn't practical for a number of reasons. One of them is that I am charged with the duty of instructing you fully and accurately concerning these various rules of law as to the issues, what the burden of proof is and what the parties have to prove to be entitled to a verdict, the measure of damages, and such as that, and for the sake of accuracy and completeness, I find in my case, at any rate, I feel safer if I write them out and know in advance that I have them accurately stated and in accordance with the rules of law, as I know them and understand them, and also counsel are entitled to know, and the rules so provide, they are entitled to know what the court is going to instruct on these various matters and various issues before they argue so that they can frame their argument accordingly, and that is the reason the attorneys can predict to you so accurately what the court is going to instruct, because I call them in, out of the presence of the jury, and discuss these instructions with them. They are privileged to make proposals to me, I adopt many of their proposals, have instructions of my own, and when I finally make up the set of instructions I am going to give, I tell the lawyers what I am going to do so that they can [1316] govern themselves accordingly in the argument.

Now, also, there is a strict rule against a judge in the state court commenting on the evidence. He would be subject to reversal if he commented on the

evidence or otherwise gave the jury his view of what the issues were. That isn't true in Federal Court, a Federal Court judge is privileged to comment on the evidence, but any comment I make about the evience or the issues, telling you what they are from my understanding, you are not bound by that at all. You may consider it just the same as you would consider the argument of counsel, if you think it is sound; if not, you can entirely disregard it, you are not bound by it, but as to these formal instructions which I will give you on the law, you are bound by them, it is your duty to follow them, to assume that I know what I am talking about, it is your duty to assume they are right, and follow them and apply them as best you can to the evidence.

Now, before I start these formal instructions, I think it might be helpful for me to just give you my idea of what the issues are here, considering that there is little, if any, dispute as to many points which the plaintiff has the burden of proving. Your task is considerably simplified because of the removal, and I will comment on that later on, of the withdrawal from your [1317] consideration of the second cause of action. We have only the first cause of action, which is the one, as counsel pointed out to you in argument, for a claimed breach of a collective bargaining agreement between the plaintiff, Mr. Dillion, and the defendant union.

Now, there isn't any serious question about there being a contract. The contract is in evidence here and we have this contract, which isn't disputed, entered into between Mr. Dillion and the union. It

isn't seriously disputed either that under that contract it was the duty of the union to furnish men to Mr. Dillion on his job with Hopkins, if the men were available, and to furnish them within a reasonable time under the circumstances.

Now, it isn't seriously disputed, is it, that the men weren't furnished out there, Mr. Dillion's contract was cancelled by Hopkins, and he lost the job because he didn't have the men to man it?

Now, you have got two questions to answer from the evidence and the Court's instructions; one, was the union responsible legally for the failure to furnish the men to Mr. Dillion, and you consider that in the light of the instructions which I shall give you and the evidence in the case, and if you find that the union was responsible, then how much was Mr. Dillion damaged and [1318] what amount should be given to him by way of damages.

Now, let me point out again, on any comment of that kind you are not bound at all by my remarks, but I will now proceed to give you the instructions on the rules of law.

This action was commenced by a written complaint filed by the plaintiff. In response thereto, the defendants filed their answer denying the allegations of the first cause of action in the plaintiff's complaint. The statements in these pleadings are not evidence and should not be regarded as such. The Court will now summarize the pleadings as to the various allegations or claims or contentions, which mean the same thing, which have not been withdrawn.

The plaintiff alleges or claims that the defendant Plumbers & Steamfitters Local 598 represents employees who were employed generally in the plumbing and steamfitting industry, and that W. W. Cape, Rudell Beames, and William Lawson are members of the union and Business Agent or Assistant Business Agents of the union. He alleges that the local union represents employees in an industry which affects interstate commerce as defined in the Taft-Hartley Act, which is a Federal law dealing with certain activities of employers and employees. Plaintiff further alleges that he commenced negotiations with [1319] defendant local union, through its Executive Board and Business Agents, commencing on approximately June the 1st, 1954. These negotiations were purportedly for the purpose of obtaining a collective bargaining agreement from the local union, and the plaintiff contends that such a collective bargaining agreement was necessary in order to obtain a source of supply of employees which would be used in the plaintiff's proposed business of fabricating and installing pipe and that such employees could not be obtained from any other source of supply than the defendant local union. Plaintiff also contends in his complaint that certain requirements were set up by the defendant union and its representatives as a condition to the obtaining of such collective bargaining agreement by the plaintiff and that, in fact, the plaintiff did comply with all of the conditions required by the union.

The plaintiff alleges that he established himself in a pipe fabricating and installing business and

that in such business he would have been required to furnish 75 per cent of the pipe fabricated and installed by him under contract with other persons and that at least 40 per cent of such pipe would have been furnished and obtained from without the State of Washington and shipped across state lines according to the plans and as is usual in such business. [1320]

Plaintiff alleges that he entered into a contract or collective bargaining agreement with the defendant union on November 22, 1954, and that by reason of this agreement and a mutual understanding of the parties, he was entitled to obtain men from the union to be used in carrying on his business activity as a pipe fabricator and installer. He alleges that the union commenced the furnishing of the men pursuant to the demand of the plaintiff, but plaintiff alleges that the defendant refused to furnish more than two men, even though plaintiff states he informed the defendant union he would lose and suffer unless the union furnished men, which the plaintiff contends were available to go on the job for him.

Plaintiff alleges that he became an employer engaged in interstate commerce, as defined by the Federal law pertaining to the action which he has brought against the defendant union and its agents, and that the acts of the union and its agents in refusing to supply the plaintiff with men has the effect of violating the Federal law under which plaintiff has brought this action and that he is entitled to recover against the defendant union and

its agents for the losses which he alleges to be the result of the defendant union's breach of the collective bargaining contract with the plaintiff. The damages the [1321] plaintiff has alleged are in the amount of $50,000.

Now, the defendant in its answer, in effect, denies that it breached any collective bargaining contract with the plaintiff or failed to carry out its obligations under that contract and that it did not in any way cause any damages to the plaintiff whatsoever.

The foregoing, as I have said, is merely an outline of the allegations or claims of the parties in their pleadings and you are not to take such allegations as any proof of the matters stated in them and you are to consider only those matters alleged in the pleadings, as summarized in these instructions, which are established by a preponderance of the evidence.

The plaintiff has the burden of proving by a preponderance of the evidence, one, that the plaintiff was engaged in business and that this business included transactions in interstate commerce or transactions which materially affected interstate commerce; two, that the defendant union, acting by and through its authorized agents or officers, entered into a collective bargaining contract with the plaintiff; three, that the union failed or refused to perform a duty or obligation imposed upon it under this collective bargaining agreement; and, four, that as a result of such failure or [1322] refusal to perform, if you find there was one, the plaintiff was

damaged in an amount which you can determine from the evidence with reasonable certainty.

The term "burden of proof" means the obligation to prove a fact or facts by evidence which fairly preponderates over the opposing evidence. If the plaintiff fails to sustain the burden as to any issue thus cast upon him, such issue must be resolved against him.

The term "proximate cause" as used in these instructions means an efficient cause of loss without which such loss would not have occurred. It is that cause which, in direct, unbroken sequence, produces or directly contributes or produces the loss complained of and without which cause the loss would not have occurred.

By the term "preponderance of evidence" or "a fair preponderance of the evidence" is meant that evidence on a particular matter which, when fairly, fully, and impartially considered by you, has greater weight with you, produces a stronger impression, and is more convincing to you as to its truth than that to which it is opposed, and such preponderance of evidence is not necessarily determined by a greater number of witnesses who may have testified for one party or the other regarding such matter, since you may take into consideration all of the evidence in the case no matter by which side it [1323] was produced.

Now at the outset when I just extemporaneously told you what I thought were the questions you had to answer, what were the issues here, I may have over-simplified. I think, in fairness, I should say

that I overlooked this interstate commerce angle which the plaintiff has the burden of proving, which was the first one of the items that I mentioned in my formal instructions as to what the plaintiff had the burden of proving, that is, that the plaintiff was engaged in business and that this business included transactions in interstate commerce or transactions which materially affected interstate business. That is the thing that I should have added in my extemporaneous summary of what the issues are.

Now, the term "interstate commerce," of course, means commerce between the states. In this case, it would have to mean commerce between the State of Washington and some other state. But travel by men or personnel between states for the purpose of seeking or accepting employment is not interstate commerce. For the purpose of this case, interstate commerce means the transportation of goods or materials.

Whether or not the defendant union breached its contract with the plaintiff with respect to providing [1324] men to the plaintiff must be determined in the light of all the facts and circumstances then existing. The collective bargaining agreement in this case does impose an obligation upon the defendant union to supply and dispatch men to the plaintiff. This obligation, however, is one which should be reasonably interpreted. It does not mean that the union unconditionally must provide men to the plaintiff under any and all circumstances. This obligation means merely that the union must supply men to the plaintiff as are available for dispatch

to the plaintiff under all the circumstances which appear to you to be reasonably material. The union was not required to furnish men if men were not available for employment by the plaintiff.

In determining whether or not the defendant union failed to perform its obligation to provide men to the plaintiff, you may consider such circumstances as the availability or non-availability of qualified men, the obligations of the union to supply and dispatch men to other employers, the type of men requested by the plaintiff, and any other fact which is in evidence and which you believe to be material in determining the reasonableness of the acts of the union. The union would not be liable for failing to supply men to the plaintiff if to do so was impossible under the circumstances which existed at [1325] the time the plaintiff made his request for men.

The defendant union was under no obligation to the plaintiff to attempt to persuade its members to leave any other job or employment in order to dispatch such men to the plaintiff.

Plaintiff's second cause of action based on a charge of conspiracy to restrain trade was, as I have told you, dismissed by the Court on legal grounds. This is not to be taken by you as any indication whatsoever as to whether or not the plaintiff should or should not recover on his second cause of action for breach of contract. Moreover, you are to consider and take into account only the evidence that bears upon or pertains to the issues raised by the first cause of action. That applies both to oral testi-

mony and documentary evidence introduced as exhibits. Putting it another way, you are to disregard entirely any and all evidence that bears upon or pertains only to the second cause of action.

Since the contract of the defendant with the plaintiff specified no time for performance, the time for performance would be a reasonable time. In determining what was a reasonable time, you should take into consideration the circumstances and all surrounding facts known to the defendant union at the time.

If you find that the general contractor, Lewis [1326] Hopkins, cancelled his contract with the plaintiff without affording the plaintiff and the union reasonable time in which to obtain and dispatch men to the plaintiff's job, and that in consequence plaintiff's damage resulted solely from the wrongful or unreasonable acts of Hopkins, then your verdict in this case should be for the defendant.

The union was not required under its agreement with the plaintiff to dispatch men to the plaintiff who were unwilling to work for the plaintiff, nor was the union required to insist that men dispatched to the job remain on the job if those men, of their own volition and without influence by the union, desired to quit.

The plaintiff in this case was required to take all reasonable steps to minimize the amount of his damage, and you may not include in your verdict any loss by plaintiff if by reasonable steps he could have avoided it.

Now, ladies and gentlemen, you are the sole and

exclusive judges of the evidence and the credibility of witnesses in this case and the weight to be attached to the testimony of each witness. In weighing the testimony of a witness, you should consider his demeanor upon the witness stand, his apparent fairness or lack of fairness, apparent candor or lack of that quality, [1327] reasonableness or unreasonableness of the story the witness relates, and the interest, if any, you may believe a witness feels in the result of the trial or in your verdict, and any facts or circumstances arising from the evidence which appeals to your judgment as in any wise affecting the credibility of the witness.

You should be slow to believe that any witness has testified falsely in this case, but if you do believe that any witness has wilfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely except insofar as it may be corroborated by other credible evidence in the case.

Plaintiff having testified as a witness, the foregoing relating to credibility of witnesses, weight of testimony, applies to him and his testimony as well as to all other witnesses in the case. Likewise, the foregoing instruction as to credibility of witnesses and weight of their testimony applies to the testimony of the officers and agents of the defendant union when they testify in the case.

Testimony taken by deposition received in evidence before you is entitled to the same consideration that you would accord the same testimony if given from the witness stand by a witness in court. [1328]

Under the law, a labor union is responsible for its acts and consequences thereof to the same degree that an individual would be responsible.

Now, ladies and gentlemen, I have no means of knowing what your verdict will be and I certainly have no intention of suggesting to you or trying to influence you or to void your functions. I am going to leave that strictly to you. However, if you should return a verdict for the plaintiff, then it would be your duty to assess the amount of damages which are to be awarded to him. It therefore becomes necessary for me to instruct you on measure of damages. I want you to understand that my so instructing you is not to be taken by you as any indication as to what your verdict should be, whether it should be for the plaintiff or for the defendant. I am merely giving you this instruction on damages in the event that you should, from the evidence, conclude that the plaintiff was entitled to recover and would have use for it.

In accordance with the general principles governing the allowance of damages, a party to a contract who is injured by its breach is entitled to compensation for the injuries sustained and is entitled to be placed, insofar as this can be done by money, in the same position he would have occupied if the contract had been [1329] performed. The measure of damages for the breach of the agreement between the defendant union and the plaintiff is the amount which would have been received if the contract had been kept, which means the value of the contract, in-

cluding the profits and advantages which are its direct results and fruits. A recovery may be had both for gains prevented and losses sustained by reason of the breach, including the loss of prospective profits and the plaintiff's loss of time while engaged in the performance of the contract.

It is not necessary that you determine the amount of the damages to the exact dollar and cents figure, a reasonable estimate is sufficient, but the amount should be based on the evidence and not on speculation or conjecture on your part.

In an action for damages for breach of contract, the fundamental principle is full conmpensation for the wrong done. The general rule is that compensation shall be equal to the injury. The breach is the measure by which the compensation is to be measured, and all that the law requires is that such damages be allowed as in the judgment of fair men and women directly and naturally resulted from the breach.

Now, if your verdict should be for the plaintiff, you may not properly include in the amount awarded [1330] supposed or claimed profits which the plaintiff might have received from contracts other than the Hopkins contract. Profits of the latter nature would be wholly speculative and/or conjecture and not supported by the evidence in the case.

Again, now, in case your verdict should be for the plaintiff, you are not permitted to add together different amounts representing the respective views of different jurors and divide the total

by 12. That is what is known as a quotient verdict and would be contrary to law.

You are, of course, to give consideration to each others' views and reasoning and honestly endeavor to reach a verdict, but such common agreement is to be based upon the final, honest belief of the jurors and must not be arrived at by that mechanical process of addition and division which constitutes a quotient verdict.

Now I want to say just a word about your deliberations. By the way, your verdict must be unanimous. All 12 of you must agree upon the verdict before the foreman can sign it and it can be received in court.

As men and women of practical affairs, it would be a very unusual miracle if 12 people could walk out in the jury room and all agree in a case of this kind on [1331] all the issues that are presented. That is not according to human affairs and human nature. Necessarily, if you are going to reach a verdict, there must be some give and take. You must deliberate together, you must have respect for each others' views, and I want, of course, to make it clear to you that if you have a firm, settled conviction, you shouldn't surrender it merely for the purpose of arriving at a verdict, but you should pay respect to the other fellow's views, and particularly if you find yourself very heavily in the minority, I think the thing a reasonable person should do is to re-examine his own views and his own position and wonder if the majority might not be right and he might be wrong, but don't sur-

render a conviction that you have merely for the sake of agreeing.

When you retire to the jury room to consider your verdict, you will take with you the exhibits which have been admitted in evidence in the case and forms of verdict which have been prepared for your convenience. They are very simple in this case. I don't think you will have any difficulty with them. They have a heading or what lawyers and judges call the caption of the case at the top, that is, W. C. Dillion against the Union, and then there is one for the plaintiff and one for the defendant and you select the one, of course, that [1332] corresponds to your conclusion which you have reached. This one for the plaintiff would be: "We, the jury in the above-entitled case, find for the plaintiff in the sum of blank dollars on the first cause of action." The one for the defendant reads: "We, the jury in the above-entitled cause, find for the defendant on the first cause of action." Simply select the one that fits your finding, and the first thing, as I have indicated, you should select a foreman, select one of your members as foreman, and the foreman acts as your chairman and presides over your deliberations, and then when you have agreed upon a verdict, signs it. And, as I have said before, all 12 of you have to agree to reach a verdict.

Now I will ask the jury to step out for a few minutes and then we will send you out to lunch.

(Whereupon, the following proceedings were had out of the presence of the jury:)

The Court: In the absence of the jury, counsel may now state their exceptions to the Court's instructions of failure to give instructions. If you wish to take my set, you are welcome to have them here.

Go ahead, if you are ready. I was just going to ask Mr. Vance if he was ready. Whoever is ready may state them.

Mr. Gladstone: Well, I was going to ask if it [1333] would be possible to take these up after lunch?

Mr. Vance: The defendant has no exceptions other than the failure to give a directed verdict for the defendant.

The Court: I see. I think you have restated your motion at the close of all the evidence.

Mr. Vance: Yes, I did.

The Court: Of course, you have the privilege of renewing it within ten days, as I understand it, under the rule.

Mr. Vance: That is what I understand. [1334]

* * *

January 18, 1957, 2 P.M.

(Whereupon, the trial in the instant cause was resumed pursuant to recess, all parties being present as before, and the following proceedings were had in the absence of the jury:)

Mr. Day: If I may hand the Court back its instructions.

The Court: Yes, all right.

EXCEPTIONS TO INSTRUCTIONS

Mr. Day: Your Honor, I at this time wish to take exception to the Court's instructions, particularly as to Instruction No. 4, which in the first paragraph provides or makes reference to transactions in interstate commerce and indicates that the plaintiff must prove by a preponderance of evidence that the plaintiff must establish the interstate commerce feature.

It is the plaintiff's position that this is a matter of law affecting jurisdiction and the Court's jurisdiction over this case, and that with the evidence before it the Court should determine as a matter of law that the jurisdiction has been established and either to instruct the jury or withhold instructions on interstate commerce from the instructions. And I admit that we have not furnished a proposed instruction instructing [1339] the jury as a matter of law, but it is our position that it would not be necessary, that the Court need not submit an instruction for a finding of fact on this matter.

The same applies, your Honor, to Instruction No. 5, which follows this Instruction No. 4, in that it again leaves a question of fact on interstate commerce for the determination of the jury, and I might also note that there has been no contradiction, at least in my recollection, of the interstate commerce feature.

The Court: I might point out, Mr. Day, that these instructions will not be filed. As a matter of fact, of course, they are not complete, and the only

way they will appear in the record will be in the reporter's transcript that he takes when I read them to the jury, so they will not appear by number, they will just run along in the continuous flow, if I might put it that way, without any numbers appearing in them or without any separation.

So I just want to call that to your attention, that I think you have so far, but you should identify them by reference to contents so that there won't be any doubt about what you are referring to in taking exceptions.

Mr. Day: All right. Well, our objection [1340] runs mainly in Instructions 4 and 5.

The Court: You described it, the interstate commerce issue?

Mr. Day: To the interstate commerce aspect.

With regard to the Court's instruction taken from the defendant union's proposed instruction relating to a reasonable interpretation of the collective bargaining agreement in issue here, we take exception to portions of Paragraph 2 of such instruction, which reads as follows:

"The union was not required to furnish men if men were not available for employment by the plaintiff. In determining whether or not the defendant union failed to perform its obligation to provide men to the plaintiff, you may consider such circumstances as the availability or non-availability of qualified men."

We object to this portion or all of Paragraphs 2 and 3 because of the fact that the impossibility of performance, the non-availability of men, relate to

affirmative defenses which have not been pleaded, are not implied, in my estimation, by a general denial or a specific denial of our pleadings, and there has been no request to amend or conform to the proof, if, in fact [1341] any proof was established.

We take exception——

The Court: I wonder about that. I didn't think your position was that the contract imposed an absolute liability on the union to furnish men and that there could be no excuse or circumstances that would relieve them. You didn't submit any instruction asking me to instruct the jury to that effect.

Mr. Day: We did not, your Honor, because we feel that the contract and the proof put in by us does not require or imply any defenses, and there has been no affirmative defense established and we don't think that it is——

The Court: Well, I don't think it is an affirmative defense; it is my judgment it is a question of interpretation of the contract and the burden is on you to prove breach of the contract as it existed.

Of course, I don't want to argue about your theory, you have a right to make a record here, but it seems to me, in fairness to the Court, if you were taking a position that there was an absolute liability under the contract, that would be tantamount to almost instructing a verdict for the plaintiff, because there was a contract, they didn't furnish the men, and Dillion lost this contract by reason of it, so if the [1342] jury followed the Court's instructions, they would find for the plaintiff necessarily under that theory.

But you make your record.

Mr. Day: Our next exception is taken to a proposed instruction by the defendant which was given by the Court, which instruction is short and reads as follows:

"The defendant union was under no obligation to the plaintiff to attempt to persuade its members to leave any other job in order to dispatch such men to the plaintiff."

Such an instruction unnecessarily calls the attention of the jury to items which are not either in evidence or in the pleadings or no facts whatsoever in the evidence. It is an undue emphasis on a particular set of circumstances which I think were adduced only as self-serving statements, not as any defense, and were actually brought into this case by reason of, I believe, counsel's for the employers opening argument.

I urge this serious, your Honor, for your consideration at this time, and I think that this is opening an avenue here which certainly isn't in the pleadings—I don't think it is. I think, if [1343] anything——

The Court: Well, I believe implicitly it is there. Let's use our common sense. Look at all these records you have here of the hundreds that were employed down there by Blaw-Knox and by Kaiser and your other people, and your documents show that here, why, they had hundreds of men, they had hundreds of men here, but the jury could very well infer, "Well, why didn't they supply them? They had a contract to do it, they could have pulled them

off one of the other jobs," and I don't think their contract would so obligate them and to say that that is not in this case is just not being realistic because it is here as big as a mountain. I know how a jury might look at this: "Well, certainly, they should have supplied men. They could have pulled them away from Kaiser, they could have pulled them away from Blaw-Knox."

Mr. Day: Just by way of emphasis here, your Honor. We have not taken this position—I don't think we have. We haven't meant to imply by our evidence and I don't think our evidence has implied that there was an obligation on the defendants to remove anyone from a job, and this is basically our thought, that there is no evidence on the matter.

The Court: You are now asking me to adopt the theory that they had an absolute obligation to furnish [1344] you the men. Where were they going to get them? Wouldn't they have to pull them off another job if they were employed under your theory?

Mr. Day: I think there is still a source of men available, your Honor, under our proof.

The Court: Under their proof, there isn't. They are not obliged to go to the jury on your theory; they have a right to go to the jury on a question of fact; and under their theory there wasn't sufficient men. So according to your theory, the only place they could get men was to take them off some other job, and I say they hadn't an absolute obligation to furnish them, but only to furnish them if they were available, and I think I should say, in fairness to

the defendant, that they didn't have to pull them off another job.

But that is just a difference of opinion.

Mr. Day: Our next——

The Court: The only reason that I comment on it is because you say you seriously urge it and are asking me to change the instructions.

Mr. Day: Yes, your Honor.

My next exception pertains to an instruction proposed by the defendants as follows:

"If you find that the general contractor, Lewis Hopkins, canceled his contract with [1345] the plaintiff without affording the plaintiff and the union reasonable time within which to obtain and dispatch men to the plaintiff's job, and that in consequence plaintiff's damages resulted solely from the wrongful or unreasonable acts of Hopkins, then your verdict in this case shall be for the defendants."

Now, we take the position, your Honor, that this instruction relates to a defense in avoidance or an affirmative defense on which there is no pleading, no issue, or evidence other than the comments of the defendant employers' counsel in his opening argument, as far as I can recollect. Further, that I don't think that this could even be an affirmative defense or a matter of pleading unless Lewis Hopkins were a party to this action.

Our next exception is to what I believe your Honor has marked as Instruction No. 12, reading generally as follows:

The Court: Pardon me, I haven't numbered mine. It is one of the proposed numbers.

Mr. Day: Yes.

The Court: Probably Defendant's Proposed 12.

Mr. Day: Possibly that is it. I have made a [1346] little marking for your reference, your Honor.

The Court: You will find that these numbers are not consecutive in here. What numbers appear are the numbers of the proposals of plaintiff and defendant.

Mr. Day: The instruction reads as follows:

"The union was not required under its agreement with the plaintiff to dispatch men to the plaintiff who were unwilling to work for the plaintiff, nor was the union required to insist that the men dispatched to the job remain on the job if these men of their own volition and without influence by the union desired to quit."

We take the position that there is no evidence of men being unwilling to work for the plaintiff, that there is no evidence or requirement or inference that the union would be required to keep men on in Dillion's job, and that this would be an affirmative matter which has not been pleaded.

Thank you, your Honor. [1347]

* * *

(After argument by counsel on motion for new trial or, in the alternative, judgment notwithstanding the verdict, the following proceedings were had:)

The Court: Well, I think this case has been rather troublesome for all of us. It presents very unusual, difficult problems and I finally came to the conclusion that the conspiracy part hadn't been established and what the jury finally came out with was a verdict for breach of contract under the National Labor Relations Act.

This contract between the employer and employee, while it isn't free from doubt in my mind, I think I will [1349] adhere to the position I took when I submitted the case to the jury, that the Court does have jurisdiction here and that the contract was not illegal, under the law, on the part of the employer.

I am genuinely disturbed, however, at the amount of the verdict. I think I have to assume that the jury followed the Court's instructions and it was not unduly influenced by the evidence which was on the conspiracy angle and which the Court instructed them to disregard, and I think that on this breach of contract that the jury was not limited strictly to the loss of profit of plaintiff employer here by reason of loss of the contract; I think that there was here an element of loss of business and his being put out of business, which the jury could consider, but this matter of the labor contract franchise, I don't believe that there was anything of that sort in the evidence here of a dollar and cents nature that the jury could use as a basis of award of damages.

It is a difficult problem. I don't ordinarily interfere with jury's amounts, particularly in personal

injury cases where I wouldn't have awarded that much or that little. I think that I should allow rather broad leeway to juries. We have the jury system and we have to work with it, but I really do think that this verdict is too high, and my reduction of it, of course, all I can do is make it [1350] provisional, but it necessarily has to be more or less arbitrary. I don't take quite the view that Mr. Vance does, nor do I think that the verdict in its full mount is justified, and, as I say, more or less arbitrary determination, I am going to direct that the verdict be reduced to $30,000, or, in the alternative, if the plaintiff does not see fit to accept that reduction, that a new trial be granted.

Is there anything else?

(Which is all the proceedings had and evidence adduced in the above-entitled cause.)

[Endorsed]: Filed September 26, 1957. [1351]

[Title of Court of Appeals and Cause.]

CERTIFICATE OF THE CLERK

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the originals filed in the above

cause, called for in Appellant's Designation filed September 24, 1957,

Date of Filing Title of Document

4-29-55—Amended Complaint.

5-11-55—Motion of Plumbers Union to Dismiss Amended Complaint.

11-17-55—Order Denying Motion of Union to Dismiss Amended Complaint.

12-19-55—Answer of Head, Mokler, Randolph and Taylor.

12-19-55—Answer of Union, et al., and Affirmative Defense.

1- 9-56—Reply to Union's Answer.

1-17-57—Jury's Directed Verdict, Second Cause of Action.

1-18-57—Jury's Verdict, First Cause of Action.

1-17-57—Judgment on Jury's Verdict, Second Cause of Action.

1-25-57—Alternate Motion for Judgment NOV and Motion for New Trial.

2- 1-57—Judgment on Jury's Verdict, First Cause of Action.

6-12-57—Order Denying Motion for Judgment NOV and Motion for New Trial.

6-13-57—Plaintiff's Consent to Remittitur.

7- 5-57—Notice of Appeal.

7- 5-57—Stipulation re Supersedeas Bond on Appeal.

7- 8-57—Order approving stipulation re Supersedeas Bond.

7-24-57—Order extending time to file and Docket Record on Appeal to October 1.

9-24-57—Reporter's Transcript of Proceedings.
9-24-57—Defendant Union's Abstract of Testimony Exhibits.
9-24-57—Statement of Points.
9-24-57—Designation of contents of Record on Appeal.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court at Yakima in said District this 24th day of September, 1957.

[Seal] STANLEY D. TAYLOR,
Clerk, United States District Court, Eastern District of Washington.

By /s/ THOMAS GRANGER,
Deputy Clerk.

[Endorsed]: No. 15729. United States Court of Appeals for the Ninth Circuit. Plumbers & Steamfitters Union, Local No. 598, Appellant, vs. W. C. Dillion, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Southern Division.

Filed: September 26, 1957.

Docketed: Sept. 28, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15729

PLUMBERS' UNION LOCAL 598 of PASCO,

Appellant,

vs.

W. C. DILLION,

Appellee.

STATEMENT OF POINTS

The Appellant Plumbers Local Union 598 of Pasco intends to rely on the following points on appeal.

1. That the evidence fails to show the existence of interstate commerce to establish the jurisdiction of the District Court within the meaning of the Labor Management Relations Act of 1947 and that otherwise the District Court was without jurisdiction.

2. That the contract on which the plaintiff relies was illegal and void and therefore no action will lie for its breach.

3. That the District Court erred in failing to grant the judgment notwithstanding the verdict of the jury for the above two reasons.

4. That the District Court erred in refusing to grant the defendant a new trial on the ground that the verdict of the jury was so grossly excessive as to be not supported by any evidence.

5. That the court erred in denying a motion for a new trial on condition of a remittitur of only the sum of $10,000.00.

/s/ J DEANE VANCE,

VANCE & PETERSON,

Attorneys for the Appellant, Plumbers Union Local 598 of Pasco.

[Endorsed]: Filed September 28, 1957.